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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Trial

8 -----

8 May 5-11, 12-14, 2015
9 May 19-21, 26-29, 2015
262 Old Country Road
Mineola, New York

10

B E F O R E:

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12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

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A P P E A R A N C E S:

14

15 MADELINE SINGAS
Acting Nassau County District Attorney
For the People
16 BY: ANTHONY PERRI, ESQ.,
Assistant District Attorney
17 of Counsel

18

19 HON. KENT MOSTON
Nassau County Legal Aid Society
Attorneys for Defendant
40 Main Street
20 Hempstead, New York
BY: MICHAEL BERGER, ESQ., of Counsel

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22 Spanish Interpreter: Carmen Knight

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KAREN M. MASLER
Senior Court Reporter

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1 THE CLERK: Case on trial, Indictment Number
2 742N of 2014, People of the State of New York vs.
3 Daniel Ramos.

4 MR. PERRI: Anthony Perri, for the People.
5 Good morning.

6 MR. BERGER: Michael Berger, Legal Aid
7 Society, for Mr. Ramos.

8 THE INTERPRETER: Carmen Knight, New York
9 State interpreter.

10 THE CLERK: Are you Daniel Ramos?

11 THE DEFENDANT: Yes.

12 THE CLERK: Do you appear here with your
13 attorney, Mr. Berger?

14 THE DEFENDANT: Yes.

15 THE CLERK: You may be seated, sir.
16 Are both sides ready?

17 MR. PERRI: Yes, your Honor.

18 MR. BERGER: Yes, your Honor.

19 THE COURT: Before we start jury selection,
20 we have preliminary matters we need to take care of.

21 First, People, you turned over Rosario; is
22 that correct?

23 MR. PERRI: The People handed over a Rosario
24 packet to the Court and to defense counsel.

25 THE COURT: Mr. Berger, do you acknowledge

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1 receipt of that?

2 MR. BERGER: I acknowledge receipt of
3 documents that is numbered approximately 371 pages.
4 That has been turned over to me by Mr. Perri this
5 morning.

6 THE COURT: The Court will mark that Court
7 Exhibit I.

8 Additionally, Mr. Berger, have you had an
9 opportunity to go over the Antommarchi waiver with your
10 client?

11 MR. BERGER: I have not.

12 THE COURT: Before we finish with the
13 Antommarchi waiver, Mr. Ramos, I want to address with
14 you a letter that you sent to me personally that I have
15 now marked as a motion, which asks me to give you a new
16 lawyer.

17 Mr. Ramos, I've read over the letter, I've
18 discussed it with Mr. Berger and with Mr. Perri, and
19 it's my understanding that Mr. Berger has discussed
20 this letter with you; is that correct, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Ramos, do you want me to
23 inquire of you now regarding your request for a new
24 attorney, or do you want to stay with Mr. Berger?

25 THE DEFENDANT: I want to stay with

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1 Mr. Berger.

2 THE COURT: Are you thereby withdrawing your
3 request for a new attorney?

4 THE DEFENDANT: Yes, okay.

5 THE COURT: I don't want to hear okay. I
6 need to know whether or not this is what you want to
7 do. Do you want to withdraw your request for a new
8 lawyer?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Ramos, has anyone forced you
11 to withdraw your request for a new attorney?

12 THE DEFENDANT: No.

13 THE COURT: Has anyone threatened you?

14 THE DEFENDANT: No.

15 THE COURT: Is it you and you alone that has
16 decided you do not want a new attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: People, do you want to be heard?

19 MR. PERRI: No, your Honor.

20 THE COURT: Mr. Berger, anything for the
21 record on this?

22 MR. BERGER: I would state, for the record, I
23 have seen Mr. Ramos at least twice since that time. We
24 had excellent conferences, and we're both ready to
25 proceed.

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1 THE COURT: Very good. The motion is being
2 marked withdrawn. Thank you.

3 Mr. Ramos, I'm holding up in front of you a
4 piece of paper that says Antommarchi waiver on it; do
5 you see this document?

6 THE DEFENDANT: Yes, I see it.

7 THE COURT: Is this the document you just
8 went over with your attorney with the help of the
9 interpreter?

10 THE DEFENDANT: Oh, yes.

11 THE COURT: And is this your signature above
12 where -- above where it says the word defendant?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand what you waived
15 by signing this document, sir?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand, Mr. Ramos,
18 that normally you would have the right to be present
19 during any material stage of the trial, when impaneling
20 the jury and that if we had a conversation up here at
21 my desk, you would have the right to come up to my desk
22 if that's what you wanted to do, but by signing this
23 paper, you are relying on your attorney to come up to
24 the bench, and then to let you know exactly what has
25 been said while you remain at the table. Do you

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1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And is that what you would like
4 to do?

5 THE DEFENDANT: Yes.

6 THE COURT: This will be marked as Court
7 Exhibit II.

8 The next item I have here is the People's
9 witness list, which I'll mark as Court Exhibit III.

10 Now, Mr. Berger, I'm not asking that you
11 necessarily provide me a witness list at this time. I
12 do require that you provide me with any names of
13 potential witnesses when I do jury selection. I do
14 delineate for the jury what names are the People's
15 names and what names are the defendant's names. I also
16 advise the jury that these are potential witnesses or
17 names they may hear during the case. Do you have any
18 names to give me, sir?

19 MR. BERGER: Christy Hernandez, Dr. Karl
20 Reich.

21 THE COURT: Spell the last name for me,
22 please.

23 MR. BERGER: R-E-I-C-H, maybe. Stephany
24 Ramos.

25 THE COURT: Christy Hernandez, Karl Reich and

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1 Stephany Ramos.

2 MR. BERGER: Yes, your Honor.

3 THE COURT: Anyone else?

4 MR. BERGER: No, your Honor. I reserve the
5 right to produce others but at this point those are the
6 only possible names that I'm aware of.

7 THE COURT: Fair enough. I appreciate that.
8 I want to make sure that we are in a posture to
9 proceed.

10 Mr. Berger, I'm sure you have spoken with
11 your client about a potential plea bargain in this
12 scenario. I want everyone on notice, as the Court
13 understands it, there are two counts in the indictment.
14 The first count being criminal sexual act in the first
15 degree, which I understand carries a minimum sentence
16 of five years incarceration, and a maximum sentence of
17 twenty-five years incarceration, and endangering the
18 welfare of a child, which is an A misdemeanor, which
19 carries a maximum sentence of one year incarceration.

20 Mr. Berger, is your client aware of the
21 charges that he is facing and the possible sentences?

22 MR. BERGER: He is.

23 THE COURT: And are we proceeding to trial at
24 this time?

25 MR. BERGER: We are.

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1 THE COURT: Very good.

2 People, I'll hear you now on any
3 preliminaries you have.

4 MR. PERRI: Yes. The People have an
5 application under Molineaux. Your Honor, although, the
6 People concede that use of evidence of prior bad acts
7 and crimes to prove the defendant's actual propensity
8 to complete the crime that is before the Court
9 contained in the indictment that would be inadmissible
10 as a matter of law --

11 THE COURT: It's about custody?

12 MR. PERRI: The People would state that they
13 should be allowed to elicit testimony regarding certain
14 prior bad acts and uncharged crimes for two reasons:
15 The first, it's material to ask aspects of the People's
16 case other than propensity, and second, the probative
17 value of the evidence outweighs any incidental
18 prejudice that such testimony may cause. The testimony
19 of the People are seeking to elicit, clearly from
20 Crystal Ramirez Ramos, as follows:

21 On at least one occasion it is alleged that
22 the defendant, in the preceding months to the incident,
23 contained in the indictment, had oral sexual contact
24 with the victim's vagina while alone with her in her
25 mother's bedroom at the same location.

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1 At that time the defendant also allegedly
2 exposed his penis and touched his penis to the buttocks
3 to the six-year old victim. In preparing for my
4 testimony, the evidence has been repeated, disclosed by
5 her in the same fashion, there's an earlier disclosure
6 that defense counsel has given notice contained in the
7 32B, the supporting deposition of Crystal Ramirez, and
8 there was also testimony about it at the hearing that
9 was conducted in this case.

10 Your Honor, the non-propensity reasons is
11 that the People argue -- justify the admission of this
12 testimony are fundamentally three-fold. The first is
13 that the People argue this testimony, and the
14 allegations contained in the indictment, constitutes
15 one ongoing course of criminal conduct, and although,
16 the People were not able to present a course of conduct
17 charge in the grand jury due to the young age of the
18 victim and inability to pinpoint the earlier alleged
19 incident outside of the -- within a two-month range,
20 that would be required in order to present to the grand
21 jury a course of criminal conduct charge in the first
22 degree.

23 The People believe and argue to the Court
24 that these two charges, these two incidents together
25 are part of an ongoing criminal conduct against this

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1 child perpetrated by the defendant.

2 Second, the People believe it's valid
3 background material that is explained to the jury, the
4 relationship that existed between the defendant and the
5 alleged victim in this case, that this incident
6 contained in the indictment did not happen out of
7 nowhere. It was not as a spontaneous incident in the
8 kitchen, but there was conduct the People would argue
9 is grooming and actual sexual abuse that occurred prior
10 to the date of incident in this case.

11 And finally, third, your Honor, the People
12 argue that proper evidence of motive and intent of the
13 defendant, that the People argue this rebuts the
14 defendant's own statements that his conduct, the
15 statements to the police that were the subject of the
16 Huntley hearing, that his conduct of having oral
17 contact with the private areas of the alleged victim
18 was not sexual in nature, that it was for the purpose
19 of tickling her.

20 Whereas this evidence shows that because
21 there was a prior occasion where this occurred in
22 seclusion in an intimate setting in the bedroom of the
23 victim's mother, when she was isolated from her
24 brother, and the defendant exposed his own genitals
25 during that incident, the sexual purpose and criminal

1 nature of the defendant's intent would be proven in its
2 proper evidence in the People's case in chief.

3 We handed up to the Court and provided
4 defense counsel with a copy of several cases from the
5 Second Department. First of which says, that the
6 exception to the Molineaux rule are not confined
7 notice. People v. DeJesus 24 AD3d, 464, which do not
8 confine prior incidents of criminal conduct against an
9 alleged victim, even if they are similar in nature to
10 course of conduct charges. In that case, which was
11 assault in the first degree, prior evidence of
12 assaults, and a history of violence between the parties
13 was allowed in by the Second Department in 2005 because
14 it went to the intent of the defendant and went to
15 their preexisting relationship.

16 People also provided to the Court with People
17 vs. Corvino, 19 AD2d, 842, decided by the Second
18 Department in 1993. That case applies Molineaux
19 exceptions to cases involving sex crimes. That case
20 was forcible sodomy, as well as rape of an individual.
21 At the trial, pursuant to the Court's Molineaux hearing
22 there, the victim was allowed to testify to prior
23 instances of rape and for sodomy, which are the same
24 charges contained in the indictment, none of which were
25 course of conduct charges. And the parties were known

1 to each other before the alleged sex crimes took place,
2 that was found to be admissible because it was
3 necessary to determine the nature, purpose, and intent
4 of the defendant's conduct in that case, and it was
5 essential there in testimony determining the criminal
6 case of the defendant's conduct. It wasn't limited to
7 the cases. The Second Department applied the same rule
8 of Corvino statutory sex crimes. In that case, where a
9 twelve-year old girl was raped by her mother's
10 long-term boyfriend, the Second Department allowed
11 testimony about prior contact in an intimate setting
12 between the defendant and the victim in that case,
13 prior to the incident alleged in the indictment, and
14 that constituted the defense's conviction there.

15 Finally, the People handed up People vs.
16 Ames, 96AD2d, 867, decided reasonably 2012. Where, the
17 defendant whose -- there is a charge of course of
18 conduct, as well as sex abuse, and endangering the
19 welfare of the child. The Court allowed the child
20 victim to testify about uncharged sexual contact that
21 occurred between the victim and the defendant predating
22 the items of the incidents that were charged in the
23 indictment in that case.

24 Again, the Court there found it was
25 background information that put the alleged abuse

1 contained in the indictment into a context so the jury
2 was able to follow a complete narrative of the abuse
3 that occurred.

4 In this case, where the allegations that it
5 occurred in the kitchen of the residence of the child,
6 with the mother who was a friend of the defendant,
7 where he was over and it occurred there in the kitchen,
8 the People would argue that this information about a
9 prior occasion where it was done in secret in a
10 bedroom, where the defendant was obviously deriving
11 sexual pleasure from his conduct, would be essential to
12 the jury in deciding whether or not the defendant had
13 the same intent, the same criminal sexual intent in
14 this case, and for them understanding that the
15 defendant's actions on the date of incident did not
16 occur in a vacuum, but were part and parcel of a whole.
17 The People find it more probative than prejudicial.
18 The Court, in its discretion, could provide a detailed
19 limited instruction to alleviate any danger of
20 prejudice occurring against the defendant, and were the
21 Court not to decide to allow such testimony, the People
22 would ask to be heard with respect to what we would
23 allege to open the door to such testimony in the
24 future.

25 THE COURT: Thank you. Do you want to

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1 respond, or do you have an objection to allowing it in?

2 MR. BERGER: Mr. Perri said we had notice.
3 We really didn't -- he provided me with Crystal's
4 statement, which doesn't show any firsthand knowledge
5 of what is claimed here. Mya did not apparently
6 testify in the grand jury. This is made up, the whole
7 cloth.

8 Our position simply is, anything that was
9 contained in the police statement that purportedly was
10 made in the statement by the defendant with respect to
11 sexual acts or the acts involved here, our position is
12 the defendant never made such statements and so,
13 therefore, what do we have? We have nothing except
14 what is claimed to be an act that occurred, but a
15 six-year old that gave no statements to anybody. We
16 had notice of this until recently, because Crystal --
17 not only did the mother see the incident in this case,
18 she didn't see what supposedly happened a month or two
19 ago. They're attempting to bootstrap themselves with
20 the Molineaux theory which shouldn't apply. I won't
21 address the other cases.

22 THE COURT: The record will reflect we did
23 have conferences regarding this matter in my chambers
24 prior to coming out here today. I did speak to both of
25 the attorneys about some of my thoughts with regards to

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1 this request by the People. The Court is going to deny
2 the People's application at this time based on the
3 Court's understanding of the case law, even though
4 information may be found relevant, there still needs to
5 be that weighing of probative versus prejudicial.
6 Based on what the Court's current understanding of the
7 defense's position is, which is that Mr. Ramos did not
8 commit this act, plain and simple, I am not going to
9 allow the testimony in at this time. If, during the
10 trial, information comes to light that shifts that
11 defense in a way that opens the door -- I'm not saying
12 you can't change your defense. You can do whatever you
13 want, Mr. Berger. If information comes out that
14 questions the intent of Mr. Ramos, if he determines or
15 decides he's going to say he committed the act or
16 implied he committed the act, but the intent was
17 different, if there is some sort of indication at trial
18 that this quote/unquote never happened before and this
19 is a dangerous statement for me to make, never happened
20 before, that could be perfectly fine. Never happened
21 before in some other context might open the door. I
22 can't predict what is going to come out. I'm not going
23 to give a roadmap to either of you on how to try the
24 case. I'm simply putting you both on notice that if at
25 a point in time, Mr. Perri, you believe the door has

1 been opened, do not start asking questions until we
2 have a conversation outside the presence of the jury
3 discussing why the door is opened.

4 I'll hear from both of you with regards to
5 that and then I'll adjust my ruling accordingly if it
6 needs to be adjusted.

7 People, do you understand?

8 MR. PERRI: People understand, and that would
9 be our position as well, your Honor.

10 THE COURT: I'll note for the record I know
11 you don't agree with my initial ruling and that's fine,
12 but that is my ruling at this time.

13 MR. BERGER: I would say, for the record, the
14 defendant's position is these acts never happened.
15 They're so-called tickling business that is set forth
16 in the statement was not made by the defendant at all,
17 and so, our defense will be it never happened now and
18 it never happened before.

19 THE COURT: Fair enough.

20 MR. BERGER: With respect to this now, are
21 there any other matters with respect to Sandoval.

22 THE COURT: Yes. Let's do Sandoval. Is
23 there anything?

24 MR. PERRI: Your Honor, it would simply be
25 the same request for the same testimony. It was the

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1 same request for the same prior bad act to
2 cross-examine the defendant with respect to one
3 previous occasion where we allegedly he did sexually
4 abuse this child.

5 THE COURT: The ruling remains. It's not to
6 be brought up in the Sandoval context, again, unless
7 something comes out that makes it inappropriate for it
8 to be questioned, and I'll take that at the point in
9 time that it happens.

10 The length of the trial, we have agreed we're
11 going to pick today and tomorrow. If we need more time
12 to pick, we'll cross that bridge when we get to it.
13 We're going to have testimony May 11th through May
14 14th, May 19th, 20th, and 21st, and the 26th through
15 the 29th as the outside date, agreed, People?

16 MR. PERRI: Yes, your Honor.

17 MR. BERGER: Yes, your Honor.

18 THE COURT: Anything else for the record
19 before we bring in the panel?

20 MR. PERRI: Just that I conferenced with
21 defense counsel we have a Detective Baron from the
22 special victims squad carrying detective here today
23 with basically three items of physical evidence that
24 were recovered from the alleged victim in our case, her
25 pajama pants, her underwear, as well as the sexual

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1 assault kit. We'll open those in the defendant's
2 presence after jury selection this morning during the
3 luncheon recess and allow defense counsel to inspect
4 those items.

5 THE COURT: Anything else?

6 MR. BERGER: No, your Honor.

7 THE COURT: Can we bring in the jury, please.

8 (Whereupon, the jury panel entered the
9 courtroom and was duly sworn by the clerk of the
10 court.)

11 THE COURT: Good morning, everyone. Welcome
12 to Nassau County Court, Supreme Court Part 43. My name
13 is Teresa Corrigan. I'm going to be the judge in this
14 matter today. We're about to begin the process of
15 selecting a jury in a criminal case. It is estimated
16 that this trial is going to take about two-and-a-half
17 weeks, but with a lot of time off in between, and I'll
18 get to a schedule with you shortly.

19 Before I explain the jury selection process,
20 I do want to thank you all for being here. I realize,
21 as do the attorneys, it may be an inconvenience for
22 some of you. I'm sure you could appreciate a trial by
23 jury is and has been the cornerstone of our system of
24 justice, yours and mine for more than two hundred
25 years.

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1 Now, the name of the case we're starting
2 today is the People of the State of New York against
3 Daniel Ramos. The words, the People of the State of
4 New York in that title means the government of the
5 State of New York. The government is represented by
6 the Acting District Attorney of Nassau County Madeline
7 Singas.

8 In referring to the People of the State of
9 New York, that is in referring to the government, we
10 normally will use the shorthand terminology, the
11 People, during this trial. That part of the title of
12 this case refers to the People of the State of New
13 York, does not mean that the People of this state want
14 any particular verdict. The People of this state are
15 satisfied by the just verdict of a fair jury.

16 Mr. Ramos is often referred to as the
17 defendant in this trial. The defendant is charged in
18 this case -- you have to be completely sworn in.

19 (Whereupon, a prospective juror was duly
20 sworn by the clerk of the court.)

21 THE COURT: Let me reintroduce myself to you.
22 I'm Teresa Corrigan. I'm the judge in this matter.
23 You are in Part 43. We're about to start a criminal
24 trial, and it's called the People of State of New York
25 against Daniel Ramos.

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1 PROSPECTIVE JUROR: Gurwin Pinkits.

2 THE COURT: It's very nice to meet you. Go
3 ahead and have a seat.

4 We're up to the part where I was telling you
5 what Mr. Ramos is charged with in this particular case.
6 He's charged with two counts. The first count is
7 criminal sexual act in the first degree, and the second
8 count is endangering the welfare of a child.

9 Now, we begin this trial by selecting a jury.
10 A criminal case jury is composed of twelve people. In
11 addition to the twelve jurors, we will also select two
12 alternate jurors in this matter. An alternate juror is
13 one who may serve in place of one of the first twelve
14 jurors, should some presently unforeseen extraordinary
15 emergency arise that makes it totally impossible for
16 one of the first twelve jurors to complete the trial.

17 Juror number one, that is the first juror
18 sworn in, is by our law, known as the foreperson of the
19 jury. During the trial, the foreperson has the same
20 responsibilities as any other juror. At the end of the
21 trial, however, during the jury's deliberations, we ask
22 the foreperson to sign any written inquiry which the
23 jury sends to the Court and to announce the jury's
24 verdict, guilty or not guilty, here in the courtroom.
25 The foreperson can, but does not have to chair the

1 jury's discussions during the deliberations.

2 Now, if you have participated in jury
3 selection in a criminal case before, you may notice
4 that the method of jury selection varies so to some
5 extent from judge to judge, but the essence of each
6 procedure is the same. It involves a combination of
7 explanations of the law and questions all designed to
8 help each of you, as well as the lawyers decide whether
9 you can sit as a juror in this case and be fair in
10 judging whether the defendant is guilty or not guilty
11 of a charged crime.

12 My jury selection procedure is as follows: I
13 will first, I will explain some of the basic laws that
14 applies to this case and all criminal trials. I do
15 this in part because if you are selected as a juror you
16 will be required to follow the law whether you agree
17 with it or not. Later I'll be asking you whether you
18 understand the law that I have explained and whether
19 you can accept it and follow it.

20 Second, the clerk will call the random, the
21 names of fourteen jurors who will take a seat in the
22 area to my left, which is called the jury box. I'll
23 then ask the jury in the jury box a series of questions
24 that you will respond to either via a show of hands or
25 an actual response if that is required. Then after I'm

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1 done asking questions, the lawyers will each be given
2 an opportunity to stand before you and address you and
3 ask you questions as well.

4 Finally, when the lawyers are finished, all
5 of the jurors will be excused for a few moments and
6 it's during that time that the lawyers will be given an
7 opportunity, as required by the law, to excuse one or
8 more of the jurors in the jury box. Those jurors who
9 are not excused become members of the jury and, we
10 repeat that procedure until we get an entire jury.

11 Let me introduce the parties and the lawyers
12 to you. Later in the proceedings I'm going to ask you
13 if you believe you know either the defendant or any of
14 the attorneys. As I stated earlier, the defendant in
15 this case is Daniel Ramos, and he is represented by
16 Michael Berger. In this case, the People are
17 represented by Acting District Attorney of Nassau
18 County Madeline Singas. Ms. Singas's, in turn, is
19 represented by an assistant district attorney, Anthony
20 Perri.

21 The purpose of a trial is for a jury to
22 decide on the basis of evidence presented in a
23 courtroom whether a person who is accused of a crime by
24 the People is guilty or not guilty of that crime.

25 In a trial, the jury's responsibility to

1 evaluate fairly the testimony and other evidence
2 presented here in this courtroom and decide what the
3 believable and accurate facts are with respect to what,
4 if anything, took place at the time and place in
5 question. The jury is, therefore, known as the finders
6 of the fact or the judges of the facts.

7 After the jury has determined the facts, the
8 jury must apply to the facts the law as I explain it,
9 regardless of whether the jury agrees with the law.
10 And then without fear, favor, bias, prejudice, sympathy
11 or consideration of a possible sentence or punishment,
12 you must render a decision known as a verdict stating
13 whether the defendant is guilty or not guilty of a
14 charged crime.

15 To decide the facts in the case, the jury
16 must consider only the evidence presented in this case,
17 in this courtroom. So it is important that you
18 understand what evidence is because that is what you
19 base your decision on, and it is important to
20 understand some things that you will hear about that
21 are not evidence because you do not base your decision
22 on those things.

23 First, what is evidence? There are three
24 general types. One, there is evidence that comes from
25 a stipulation of the parties. A stipulation is

1 information both parties agree to present to the jury
2 as evidence without calling a witness to testify to
3 that information.

4 Second, there is evidence that comes from the
5 introduction into evidence of physical objects, such as
6 documents, photographs, clothing, or possibly even a
7 chart.

8 And finally, as you know, the most common
9 form of evidence is the testimony of people based on
10 questions asked by the lawyers and, perhaps, asked by
11 the Court, but never asked by the jury.

12 So what is not evidence? First, the charges
13 in this case are set forth in a document known as an
14 indictment. The indictment is simply a piece of paper
15 that states the charges. Neither the indictment
16 itself, nor the fact that an indictment has been filed,
17 constitutes evidence. The defendant has pleaded not
18 guilty to the charges contained in the indictment and
19 this trial is to decide whether the defendant is guilty
20 or not guilty.

21 Second, what the lawyers say at any time is
22 not evidence. The lawyers are not witnesses. What I
23 say is not evidence, as I am not a witness.

24 Third, a question of a witness by a lawyer or
25 by the Court is by itself not evidence. It is the

1 question with the answer that is the evidence. So, you
2 are not to conclude from a question alone that anything
3 I assumed in the question to be true is true, no matter
4 how detailed or specific the question is, nor are you
5 to draw any inference either favorable or unfavorable
6 to either side from the content of a question alone.

7 You must consider the question with the
8 witness's answer and decide whether you find the answer
9 believable and accurate because, again, it is the
10 question with the answer that is the evidence.

11 There are three fundamental principles of law
12 that serve as a foundation as the American system of
13 criminal justice, and they apply in all criminal
14 trials, and it's important that you know what they are.
15 They are the presumption of innocence, the burden of
16 proof, and the requirement of proof beyond a reasonable
17 doubt.

18 Throughout these proceedings the defendant is
19 presumed to be innocent. As a result, you must find
20 the defendant not guilty, unless on the evidence
21 presented at this trial you conclude that the People
22 have proven the defendant guilty beyond a reasonable
23 doubt. That a defendant does not testify as a witness
24 is not a factor from which any inference unfavorable to
25 the defendant may be drawn.

1 The defendant is not required to prove that
2 he is not guilty. In fact, the defendant is not
3 required to prove or disprove anything.

4 To the contrary, the People have the burden
5 of proving the defendant guilty beyond a reasonable
6 doubt. That means, before you can find the defendant
7 guilty of a crime, the People must prove beyond a
8 reasonable doubt every element of the crime, including
9 that the defendant is the person who committed that
10 crime.

11 The burden of proof never shifts from the
12 People to the defendant. If the People fail to satisfy
13 their burden of proof, you must find the defendant not
14 guilty. If the People satisfy their burden of proof,
15 you must find the defendant guilty. Just because the
16 defendant is sitting there in the chair accused of and
17 charged with a crime, does not and cannot mean that he
18 starts this case with any sort of strike against him in
19 your eyes. He is presumed innocent. You may not and
20 must not begin your evaluation of this case by assuming
21 just because he is seated there he must have done
22 something wrong.

23 The law uses the term proof beyond a
24 reasonable doubt to tell you how convincing the
25 evidence of guilt must be to permit a verdict of

1 guilty. The law recognizes in dealing with human
2 affairs there are very few things in this world that we
3 know with absolute certainty. Therefore, the law does
4 not require the People to prove a defendant guilty
5 beyond all possible doubt.

6 On the other hand, it is not sufficient to
7 prove that the defendant is probably guilty. In a
8 criminal case the proof of guilt must be stronger than
9 that. It must be beyond a reasonable doubt. A
10 reasonable doubt is an honest doubt of the defendant's
11 guilt for which a reason exists based on the nature and
12 quality of the evidence. It is an actual doubt, not an
13 imaginary doubt. It's a doubt a reasonable person
14 acting in a matter of this importance would likely be
15 able or because of the lack of convincing evidence
16 NOTE!!! /-FRPBLT.

17 Proof of guilt beyond a reasonable doubt is
18 proof that leaves you so firmly convinced that the
19 defendant's guilt, that you have no reasonable doubt of
20 the existence of any of the elements of crimes or of
21 the defendant's identity as the person who committed
22 the crime. If you are not convinced beyond a
23 reasonable doubt that the defendant is guilty of a
24 charged crime, you must find the defendant not guilty
25 of that crime.

1 If you are convinced beyond a reasonable
2 doubt that the defendant is guilty of a charged crime,
3 then you must find the defendant guilty of that crime.

4 Because this is a criminal case, the police
5 are involved and will be testifying at this trial. We
6 treat police officers the same way as we do the
7 civilian witnesses. Police officers can tell the
8 truth, be mistaken, or lie just like anyone else. You
9 must evaluate a police officer's testimony for
10 truthfulness and accuracy in the same way you would
11 evaluate the testimony of any other witnesses.

12 Now, some of you may have been the
13 unfortunate victim of a crime or know someone who has
14 been a victim of a crime. Certainly, that was an
15 unpleasant experience for you. If you have had such an
16 experience or know someone who has, you may not use
17 this trial as the vehicle to exact your revenge upon
18 the person who perpetrated the crime against you, or
19 your family or friend, or to try to right a wrong done
20 to someone in the past, having nothing at all to do
21 with this defendant and this case. As I'm sure you can
22 actually appreciate this courtroom is not the place for
23 that.

24 During the trial you will hear me and perhaps
25 the lawyers use the term elements of a crime. What

1 constitutes a crime is defined by the written law of
2 New York. Each written definition contains several
3 parts including generally the specification of the
4 conduct prohibited, the state of mind with which the
5 conduct must have been performed, and in some instances
6 a result from that conduct. Those parts of the written
7 definition of a charged crime, plus the identification
8 of a person as the person who committed the crime
9 charged is what is meant by the term elements of the
10 crime charged.

11 Now, the jury's verdict, whether guilty or
12 not guilty, must be unanimous. That is each and every
13 juror must agree to the verdict. Since twelve people
14 seldom agree immediately on anything to reach a
15 verdict, you must deliberate with the other jurors.

16 What does it mean to deliberate? It means
17 you should consult with each other, listen to each
18 other, give each other's views careful consideration
19 and reason together when considering the evidence, and
20 when you do deliberate you should do so with a view
21 towards reaching an agreement if it can be done without
22 circumventing individual judgment. Even you must
23 decide the case for yourself, but only after a fair and
24 impartial consideration of the evidence with the other
25 jurors. You should not surrender an honest view of the

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1 evidence simply because you want the trial to end or
2 you are outvoted. At the same time, you should not
3 hesitate to reexamine your views and change your
4 opinions if you become convinced it was not correct.

5 We're now going to call the random names, the
6 fourteen of you and ask you to take a seat in the jury
7 box. After you are seated, I'll ask each of you
8 certain questions and then the lawyers will be given an
9 opportunity to ask questions. Let me just say this:
10 If you are not called into the jury box, I ask that you
11 pay attention anyway, because I guarantee you, before
12 the day is over, each one of you will have found your
13 way into this jury box and rather than have to repeat
14 everything over and over, thereby extending the day
15 longer than it needs to be, I want to be able to simply
16 say you have been listening, right, and you have an
17 answer for the questions that have been asked.

18 Give your attention to the clerk, please, and
19 listen to the officers.

20 THE CLERK: Jeffrey A. Collins,
21 C-O-L-L-I-N-S. That is seat number one.

22 Seat number two, Jerome Valin, V-A-L-I-N.

23 Seat number three, Luis Fuentes,
24 F-U-E-N-T-E-S. First name L-U-I-S.

25 Seat number four, Catherine Spruck,

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1 S-P-R-U-C-K.

2 Seat number five, Evelyn Tessler,

3 T-E-S-S-L-E-R. First name Evelyn.

4 Seat number six, Daniel Demott, D-E-M-O-T-T.

5 Seat number seven, Linda Wisselman,

6 W-I-S-S-E-L-M-A-N.

7 Seat number eight Fatima Ranaiahete,

8 F-A-T-I-M-A, last name R-A-N-A-L-A-H-E-T-E.

9 Seat number nine Rhonda Mollick,

10 M-O-L-L-I-C-K. First name Rhonda.

11 Seat number ten, Tabata Esquivel. First name

12 T-A-B-A-T-A. Last name, E-S-Q-U-I-V-E-L.

13 Seat number eleven, Damion John Chin,

14 C-H-I-N.

15 Seat number twelve, Laura Iovenio,

16 I-O-V-E-N-O.

17 Seat number thirteen, James Corbett,

18 C-O-R-B-E-T-T.

19 Seat number fourteen, Mark Danen, D-A-N-E-N.

20 THE CLERK: The box is full, your Honor.

21 THE COURT: Welcome to the front of the

22 courtroom, everyone who has now just joined us. Is

23 there anybody here in the first -- up in the front

24 fourteen seats that does not understand the English

25 language, or has trouble understanding me speak, raise

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1 your hands if that is your situation.

2 Mr. Fuentes.

3 Tell me what language. Obviously, it's
4 Spanish. Yes, sir.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What is it that you are having
7 trouble with, sir?

8 PROSPECTIVE JUROR: I do not understand
9 correctly. I do not understand much.

10 THE COURT: Thank you very much, madam
11 interpreter.

12 How long have you been in the country?

13 PROSPECTIVE JUROR: Twenty years, your Honor.

14 MR. BERGER: Consent.

15 MR. PERRI: Yes, your Honor.

16 THE CLERK: Seat number three, Scott Percoco,
17 P-E-R-C-O-C-O.

18 THE COURT: Welcome, Mr. Percoco.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: Any trouble with the English
21 language?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Let me ask each of you up front.
24 You heard those principles of law that I was just
25 explaining to each of you. I need to know whether or

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1 not you will each abide by that, whether or not you
2 like it, whether or not you believe in it, whether or
3 not you think the entire system should be changed. I
4 need to know, will you follow my instructions regarding
5 them and let me remind you what they are.

6 One, you must accept, agree and follow that a
7 defendant is presumed innocent.

8 Two, that the People have the burden of proof
9 of guilt beyond a reasonable doubt.

10 And three, that if the defendant does not
11 testify as a witness, that is not a factor from which
12 any inference unfavorable to him may be drawn by you.
13 If you cannot follow those principles of law, again,
14 not that you don't like them, but if you cannot follow
15 them, please raise your hand.

16 Let the record reflect no hands have been
17 raised.

18 Next, I need to know, can each of you promise
19 when it comes time to deliberate at trial, or to reach
20 a verdict of guilty or not guilty, that each of you
21 will discuss the evidence with your fellow jurors and
22 each of you will consider what your fellow jurors have
23 to say all with a view towards reaching a verdict,
24 knowing if it can be done without surrendering your
25 individual judgment?

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1 We're trying to learn early on, are you the
2 type of person -- there is nothing wrong with this.
3 I'm right, I'm always right, I don't really care what
4 you say. I don't care what the evidence is. I'm
5 right. That's okay, but it's probably not a good idea
6 to be sitting in the jury room where we expect you and
7 the law requires that you deliberate. If that's your
8 personality, go ahead and through your hands up there
9 for me. No hands have been raised.

10 Can each of you promise me you will decide
11 the case without fear, favor, sympathy, bias, or
12 prejudice for or against the People, the defendant, or
13 a witness, whether that witness is a police officer or
14 a civilian? If you cannot give me that promise and
15 assurance, raise your hand.

16 Lastly, can you each promise at this time you
17 will be fair in deciding this case, raise your hand if
18 you do not feel, with the limited knowledge you have so
19 far about the case, you could not be fair. No hands
20 have been raised. All right, now.

21 You have heard me introduce --

22 MR. PERRI: I believe, Ms. Ranalahete raised
23 her hand.

24 THE COURT: I'm sorry, Ms. Ranalahete, did
25 you raise your hand?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: With regards to which part are
3 you having trouble?

4 PROSPECTIVE JUROR: The child part.

5 THE COURT: Now, I appreciate that you heard
6 simply what the charges are in this case, you know
7 nothing else about this matter, and if I told you that
8 Mr. Ramos, as he sits here right now, is innocent of
9 all charges, there is no evidence of anything about
10 that. He's presumed innocent. Are you saying you
11 wouldn't be able to sit on a case such as this?

12 PROSPECTIVE JUROR: No, because I have two
13 small child.

14 THE COURT: Ms. Ranalahete, many of the
15 jurors in this room have small children, or
16 grandchildren, or nieces, or nephews. We're all in the
17 same position. I need to know if you can follow the
18 law as I give it to you, evaluate the evidence as you
19 hear it in this case and come to a decision,
20 understanding we are all in the same position of having
21 children or knowing children; can you do that, ma'am?

22 PROSPECTIVE JUROR: I don't believe I can.

23 THE COURT: Any further questions?

24 MR. BERGER: Consent.

25 MR. PERRI: No, your Honor. Consent.

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1 THE COURT: On consent you are excused from
2 this case. Let me explain just because you are walking
3 out of this door it doesn't mean you are Scott free.
4 There is a whole other lot of trials going on. Keep
5 that in mind before you start telling me you want to
6 run out this door because you never know what is behind
7 door number two. Good luck to you, ma'am.

8 THE CLERK: Kwan Tam, K-W-A-N last name.
9 T-A-M.

10 THE COURT: Welcome. You heard everything I
11 said so far. Is there anything you need to tell me?

12 PROSPECTIVE JUROR: Actually, I'm not very --
13 I'm too excited.

14 THE COURT: Is it the language? Do you
15 understand English?

16 PROSPECTIVE JUROR: Little bit.

17 THE COURT: Consent?

18 MR. BERGER: Consent.

19 MR. PERRI: Yes, your Honor.

20 THE CLERK: Seat eight, Steven O'Brien,
21 O-B-R-I-E-N.

22 THE COURT: Welcome, Mr. O'Brien. Have you
23 been paying attention?

24 PROSPECTIVE JUROR: Very closely.

25 THE COURT: Is there anything you need to

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1 tell me so far?

2 PROSPECTIVE JUROR: No.

3 THE COURT: You did hear me introduce to you
4 Mr. Berger, and Mr. Perri, and Mr. Ramos. Do any of
5 you believe that you know either the defendant, his
6 attorney, the assistant district attorney, or even me
7 or any of my court staff? Do any of us look familiar
8 to you? Do you know us? Do our names sound familiar?
9 Let the record reflect no hands have been raised.

10 What I would like to do now, I'm going to
11 read you a list of names. These are names of
12 individuals who you will either hear their name during
13 the trial, or they may come to testify at the trial.
14 It's definitely a situation we need to know if any of
15 these names sound familiar to you. Crystal Ramirez,
16 Mya Feliciano Ramirez, Sincere Feliciano Ramirez,
17 Police Officer Joseph Boccio, Police Officer Carl
18 Wigand, Police Officer Thomas Tedeshi, Detective
19 Maureen Boran, Detective Reinaldo Pacheco, a nurse by
20 the name of Kathleen McAllister, Christopher
21 Chillseyzn, Christy Hernandez, Karl Reich, Stephany
22 Ramos, or an employee supervisor of the NICE, N-I-C-E,
23 Transportation Company. If any of those names sound
24 familiar or you believe you know those individuals,
25 please raise your hand now. No hands have been raised.

1 Now I want to get into specifics about each
2 of you two. The first two areas we'll cover will be
3 health and ability to sit here based on health and the
4 length of trial.

5 First let me handle health. Raise your hand
6 for me if any of you has a health issue that prevents
7 you from sitting here? Understand that doesn't mean
8 uncomfortable with this situation. That means you have
9 an appointment that can't be switched, you are under a
10 doctor's care and he advised you not to be here. You
11 have surgery coming up. It's not just the
12 inconvenience. If there is a significant medical issue
13 that requires you to not be part of this jury, raise
14 your hand and keep your hand up until I get it written
15 down. Ms. Mollick.

16 PROSPECTIVE JUROR: I'm a type one diabetic,
17 your Honor. I have multiple injections during the
18 course of the day. I'm on very tight medications. I
19 have to eat, snack frequently, use the restroom
20 frequently. Very limiting.

21 THE COURT: With regards to snacking in the
22 courtroom, if you need to grab something to get your
23 sugars, okay that will not become an issue with regards
24 to having to use the facility, but for during jury
25 selection, I usually take a break about every hour

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1 because nobody can listen for more than an hour without
2 stretching and using the facility. With that
3 understanding, do you think you still would be able to
4 sit or would it be a problem?

5 PROSPECTIVE JUROR: No, I don't think.

6 THE COURT: Any questions?

7 MR. BERGER: Consent.

8 MR. PERRI: No. Consent.

9 THE COURT: On health issues.

10 THE CLERK: Cassidee Lubarsky,
11 C-A-S-S-I-D-E-E, last name L-U-B-A-R-S-K-Y.

12 THE COURT: Welcome.

13 PROSPECTIVE JUROR: Hello.

14 THE COURT: Anything you need to tell me so
15 far?

16 PROSPECTIVE JUROR: No.

17 THE COURT: The next thing I need to talk to
18 you about is the length of the trial. We know that
19 jury service and jury duty interrupts our workday,
20 interrupts what we like to do. However, it's the most
21 important thing we can do as individuals because it's
22 the best justice system out there, if you compare it to
23 the entire country. That doesn't mean there aren't
24 really good valid reasons why people can't sit for any
25 length of time.

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1 Let me give you a rundown how the trial will
2 happen. For this week, let's say you are picked as a
3 juror today, you don't need to be back here until
4 Monday. Jury selection is happening this week. The
5 inconvenience could be just today for you. That's one.

6 Starting next week, we will work May 11th,
7 12th, 13th, and 14th, Monday, Tuesday, Wednesday,
8 Thursday. You will be off on Friday. Everybody has
9 things to do. They can't put off for every Friday.
10 You can go back and do whatever you want to do in your
11 regular lives.

12 The following week you will only be asked to
13 work Tuesday, the 19th, Wednesday, which is the 20th,
14 and Thursday, which is the 21st. We then have Memorial
15 Day weekend and the kids are off from school and people
16 go away. So, there is no trial on Friday, the 22nd.
17 You can either go back to work or do whatever else you
18 need to do the following week and that will be it; if
19 it's even needed.

20 The following week we will be here the 26th,
21 27th, 28th, and 29th. That's the outside limit. With
22 that understanding of the dates, you will need to be
23 here, knowing you have days off in between. Please
24 raise your hand if there is any reason you cannot sit
25 on this case based on that? Keep your hands up for me,

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1 please. I need to mark it first.

2 Number four.

3 PROSPECTIVE JUROR: I'm recovering from
4 cancer, and I have very important doctors' appointments
5 on the 14th.

6 THE COURT: It will be the morning, the
7 afternoon?

8 PROSPECTIVE JUROR: 1:50, 2:00 in the
9 afternoon.

10 THE COURT: Is that your only conflict?

11 PROSPECTIVE JUROR: I had plans for memorial
12 weekend.

13 THE COURT: We're off the Friday and Monday.

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: It's just that doctors'
16 appointment on May 14th?

17 PROSPECTIVE JUROR: Actually, I need to also
18 go to an appointment at 10:15 on the 13th as well, that
19 is the Wednesday just before that Thursday.

20 THE COURT: Thank you. Sit tight.

21 Next hand was Mr. O'Brien.

22 PROSPECTIVE JUROR: I had yearly vacation
23 plans for the 17th and 24th.

24 THE COURT: Ms. Lubarsky.

25 PROSPECTIVE JUROR: I'm going on vacation the

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1 27th and 28th.

2 THE COURT: You are leaving the 27th?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Mr. Chin.

5 PROSPECTIVE JUROR: I'm going away on Monday,
6 this coming Monday to Florida. I won't be back until
7 Friday.

8 THE COURT: Thank you.

9 Ms. Iovenno.

10 PROSPECTIVE JUROR: I'm a teacher in the
11 city, an athletic director of single game. We're in
12 the playoffs for tryouts all during May.

13 THE COURT: Do me a favor, it's hard to hear
14 in this room. I have a reporter taking everything down
15 and someone who is helping us with Mr. Ramos. If you
16 could repeat.

17 PROSPECTIVE JUROR: I'm a school teacher and
18 athletic director at the high school. We have games I
19 need to be at every afternoon at school and tryouts for
20 the fall sports all through the month of May.

21 THE COURT: Thank you. Mr. Corbett, I
22 believe I saw your hand.

23 PROSPECTIVE JUROR: I'm an attorney and sole
24 practice litigator. I have numerous court appearances
25 during that period of time.

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1 THE COURT: No one can put an appearance for
2 you.

3 PROSPECTIVE JUROR: I'm the only attorney in
4 my office and some of these cases, large insurance
5 cases, commercial, Hurricane Sandy cases, you can't
6 pick up and figure out what it is doing.

7 THE COURT: Do you remember I said I want to
8 ask any questions of these individuals who put forth
9 vacation or other timing issues.

10 MR. BERGER: Not I.

11 MR. PERRI: No, your Honor.

12 THE COURT: Each of you that has given me a
13 reason based on timing that can't be here, I'll excuse
14 you from this case. There might be one that is shorter
15 that will suit your needs. Juror number four, you are
16 excused. Mr. O'Brien, juror number eight, sitting in
17 seat eight, you are excused. Nine, you are excused.
18 Mr. Chin, sitting in seat eleven, you are excused.
19 Ms. Iovino, seat twelve, you are excused. Sitting in
20 seat thirteen, you are excused.

21 Enjoy your time and your work requirements or
22 commitments. And again, there might be a shorter trial
23 better for all of you.

24 THE COURT: Refill those seats.

25 THE CLERK: Seat number four, Carolyn

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1 Aragona, A-R-A-G-O-N-A.

2 Seat number eight will be Anthony Martins,
3 M-A-R-T-I-N-S.

4 Seat number nine will be Eleanor Arzt,
5 A-R-Z-T.

6 Seat number eleven will be Madeline Taxier,
7 T-A-X-I-E-R.

8 Seat number twelve, Steven Mastino,
9 M-A-S-T-I-N-O.

10 Seat number thirteen, Irwin Blau, B-L-A-U.

11 MR. PERRI: Could I have the name of the
12 juror seated in number nine?

13 THE CLERK: Eleanor Arzt, A-R-Z-T.

14 THE COURT: Welcome, everyone, who just made
15 it to the front of the courtroom. I hope you all have
16 been listening carefully. By way of recap, you will
17 raise your hand for me if, one, if you don't understand
18 the language; two, you have any issues with following
19 those principles of law that I've been talking about.
20 Again, you don't have to like them, but you have to
21 follow them.

22 I need to know if you recognize any of the
23 people in the courtroom or any of those people that
24 were on the list of names that I read out, and
25 additionally, I need to know if there is any sort of

1 health issue, or if the length of the trial is a
2 problem and you let me know if you need to reread the
3 dates. Raise your hand if you come to the front of the
4 courtroom and you have an issue. Keep your hands up.

5 We're batting a thousand today.

6 Ms. Aragona.

7 PROSPECTIVE JUROR: I work full time. I need
8 to know the dates.

9 THE COURT: You want me to give them to you
10 again?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Once you are picked, you don't
13 have to be back until Monday. We're working the 11th
14 through the 14th, the 19th, 20th, and 21st. And then
15 the 26th through the 29th, if we need to go that far.
16 You can stay at the moment.

17 PROSPECTIVE JUROR: Yeah. It interferes with
18 work. I mean, any case is going to.

19 THE COURT: Work is always going to be
20 interfered with. I appreciate you being able to stick
21 around for at least awhile. The next hand I saw was
22 Mr. Martin. Yes, sir.

23 PROSPECTIVE JUROR: I think the problem is --

24 MR. PERRI: Yes, your Honor. He's my
25 brother's father-in-law.

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1 THE COURT: Fair enough.

2 Ms. Arzt.

3 PROSPECTIVE JUROR: I'm pregnant, and I have
4 multiple doctors' appointments in the next week.

5 THE COURT: Ms. Taxier.

6 PROSPECTIVE JUROR: I'm okay.

7 THE COURT: Ms. Mastino.

8 PROSPECTIVE JUROR: Last time I served, years
9 ago, I believe he was a defense attorney.

10 THE COURT: The fact that you believe you had
11 Mr. Berger as the defense attorney many years ago, my
12 question to you is: Do you feel that will get in the
13 way of you being able to sit in this case to be fair
14 and impartial?

15 PROSPECTIVE JUROR: I don't think so.

16 THE COURT: I'm going to leave you, and I'm
17 sure there will be additional questions. That's your
18 only problem at the moment.

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Mr. Blau.

21 PROSPECTIVE JUROR: I'm a physician. I had
22 to arrange for coverage for this week. There is no way
23 I could stretch it out until June.

24 THE COURT: Do either of the attorneys want
25 to ask any questions of the individuals that I believe

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1 I will let go if you are both okay with it? That would
2 be Mr. Mastino. There is no question there. Ms. Arzt,
3 I will excuse you if you are all okay with that, and
4 Mr. Blau, any questions for those individuals?

5 MR. PERRI: No, your Honor.

6 MR. BERGER: No, your Honor.

7 THE COURT: On consent?

8 MR. PERRI: Yes, your Honor.

9 THE COURT: The individuals sitting in seats
10 eight, nine, and thirteen, you are excused with the
11 thanks of the Court.

12 THE CLERK: Seat eight, James Clarke,
13 C-L-A-R-K-E.

14 Seat number nine, Susan Salvant,
15 S-A-L-V-A-N-T.

16 Seat number thirteen will be Jill Darold,
17 D-A-R-O-L-D.

18 THE COURT: Welcome to the front of the
19 courtroom to those of you who just joined me. I hope
20 you have been listening carefully. Raise your hand and
21 let me know if there is anything you need to tell me so
22 far.

23 Mr. Clarke, anything you need to tell me?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Ms. Salvant, anything?

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1 PROSPECTIVE JUROR: I have an appointment on
2 the 13th. That was it.

3 THE COURT: What time was that appointment?

4 PROSPECTIVE JUROR: 9:00 in the morning.

5 THE COURT: How long do you expect it to
6 last?

7 PROSPECTIVE JUROR: It's the clinic at the
8 Nassau County Medical Center, and I'm also on vacation.

9 THE COURT: When are you on vacation?

10 PROSPECTIVE JUROR: Friday, and then I'm on
11 vacation Monday and Tuesday.

12 THE COURT: Next week?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Who else just joined me?
15 Ms. Darold.

16 PROSPECTIVE JUROR: It's the childcare. I'm
17 going through a separation. I'm responsible for
18 getting my young daughter on the bus in the morning and
19 in the afternoon getting her off the bus at 3:30, and
20 also my son has special needs. I need to be home. I
21 work part time for that reason.

22 THE COURT: I understand. Thank you. Does
23 either attorney want to question either Ms. Salvant or
24 Ms. Darold?

25 MR. PERRI: No, your Honor.

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1 MR. BERGER: No, your Honor.

2 THE COURT: You are both excused. Thank you.

3 THE CLERK: Seat number nine, Romaine Jones,
4 R-O-M-A-I-N-E. Last name J-O-N-E-S.

5 Seat number thirteen, John Brottenberg,
6 B-R-O-T-T-E-N-B-E-R-G.

7 THE COURT: Welcome, Ms. Jones and
8 Mr. Brottenberg, is there anything you need to tell me
9 so far?

10 PROSPECTIVE JUROR: I started a new job
11 recently, and timing is just not good.

12 THE COURT: Do they pay for jury duty?

13 PROSPECTIVE JUROR: Three days.

14 THE COURT: Mr. Brottenberg.

15 PROSPECTIVE JUROR: I'm okay.

16 THE COURT: Any questions for Ms. Jones?

17 MR. BERGER: I would consent.

18 MR. PERRI: Yes, your Honor.

19 THE COURT: Good luck with your new job.

20 PROSPECTIVE JUROR: Thank you.

21 THE CLERK: Seat number nine will be Carol
22 Ann Kubinski, K-U-B-I-N-S-K-I.

23 THE COURT: Welcome.

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Anything you need to tell me?

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1 PROSPECTIVE JUROR: Except I just want to ask
2 you, deliberations are only during the day, right?

3 THE COURT: Correct. There is no longer any
4 sequestration, no hotel, no free meals on the county.

5 PROSPECTIVE JUROR: I can do without free
6 meals.

7 THE COURT: So now let me get back to the
8 questions for everybody. I thank all of you who sat
9 quietly and patiently. The next thing we need to do,
10 if you or a person close to you, if it's a friend or
11 family member has been a victim of a crime or a witness
12 to a crime, raise your hand. If you, a friend, or a
13 family member has been a victim of a crime or a witness
14 to a crime.

15 Put your hands down. Let's start with
16 Mr. Collins. Yes, sir?

17 PROSPECTIVE JUROR: Twenty-three years ago my
18 apartment was robbed.

19 THE COURT: Is that it?

20 PROSPECTIVE JUROR: That's it.

21 THE COURT: Anything about that incident that
22 makes you believe you can't sit here?

23 PROSPECTIVE JUROR: No, nothing.

24 THE COURT: You appreciate and realize that
25 what happened has nothing to do with you?

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1 PROSPECTIVE JUROR: I gotcha.

2 THE COURT: Mr. Valin.

3 PROSPECTIVE JUROR: I'm a retired police
4 officer. I've witnessed crimes.

5 THE COURT: Every day, I would say, yes.
6 NYPD?

7 PROSPECTIVE JUROR: NYPD.

8 THE COURT: How long were you on the NYPD?

9 PROSPECTIVE JUROR: From 1964 to 1984.

10 THE COURT: I appreciate as part of your job
11 you have witnessed criminal activity. Do you believe
12 you could sit here in this case, not throw that
13 experience out the window, that's unrealistic, but
14 appreciate and understand you have to decide this case
15 on what comes from here and the law I give to you?

16 PROSPECTIVE JUROR: Agree, your Honor.

17 THE COURT: You can do that?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm sure there will be further
20 questions with regards to that.

21 The next hand, I believe, I saw was
22 Mr. Clarke. Yes.

23 PROSPECTIVE JUROR: My house was burglarized
24 when I was younger. The whole family was in the house.

25 THE COURT: Was that here in Nassau County?

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1 PROSPECTIVE JUROR: Nassau County.

2 THE COURT: Was anyone ever caught for that?

3 PROSPECTIVE JUROR: I think they were
4 eventually, a couple of years later.

5 THE COURT: Did you have to come into the
6 courtroom with regard to that action?

7 PROSPECTIVE JUROR: No, my father did. He
8 was a New York City policeman.

9 THE COURT: Anything about that experience
10 from all of those years ago that makes you believe you
11 can't sit here, listen to this evidence, evaluate this
12 evidence, apply it to the law I give you and make a
13 fair decision in this case?

14 PROSPECTIVE JUROR: I could.

15 THE COURT: Thank you very much. I
16 appreciate that. I believe it is number ten.

17 PROSPECTIVE JUROR: My son's friend was
18 abused.

19 THE COURT: Was that here in Nassau County?

20 PROSPECTIVE JUROR: In Nassau County.

21 THE COURT: Was someone arrested for that?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: A person was arrested?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Did you participate in that

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1 action in any way?

2 PROSPECTIVE JUROR: Not at all.

3 THE COURT: Was there a court proceeding?

4 PROSPECTIVE JUROR: I believe so, yes.

5 THE COURT: Were you there?

6 PROSPECTIVE JUROR: No, I was not.

7 THE COURT: Anything about the fact that you
8 know someone who was abused makes you believe that you
9 can't sit in this case and be fair and impartial and
10 evaluate this evidence and apply it to the law I give
11 you?

12 PROSPECTIVE JUROR: Yes. Unfortunately,
13 because it's a child case, I'm against that.

14 THE COURT: It's too close?

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: Consent.

17 MR. PERRI: Consent.

18 THE COURT: Thank you very much for your
19 honesty in that. You will be excused.

20 THE CLERK: Seat number ten, Michael
21 McDonough, M-C-D-O-N-O-U-G-H. First name Michael.

22 THE COURT: Welcome. Anything you need to
23 tell me so far?

24 PROSPECTIVE JUROR: No.

25 THE COURT: The next question I have for the

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1 entire panel is: Have you or anyone close to you,
2 whether it be a friend or family member ever been
3 convicted of a crime, convicted of having committed a
4 crime? Raise your hand if you know someone who has or
5 you, yourself, has been. Do you or anyone close to
6 you, be it a friend or family member have any pending
7 criminal charges or civil lawsuits going on, whether it
8 be here or in another county? Raise your hands with
9 pending actions within your background.

10 Ms. Aragona?

11 PROSPECTIVE JUROR: I'm in a lawsuit for a
12 motorcycle accident.

13 THE COURT: Is that here in Nassau County?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Is it coming close to trial?

16 PROSPECTIVE JUROR: I don't believe so.

17 THE COURT: Have you been in a courtroom yet
18 with regards to it?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Do you have an attorney assigned
21 to you or helping you?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Is there anything about the fact
24 that you are in the middle of a civil litigation that
25 prevents you from sitting here in this case and

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1 evaluating this evidence and applying it to the law I
2 give you?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Can you give me assurance you
5 will not go home, call your attorney on a civil case,
6 listen, this is just what happened in court. I don't
7 have a clue what they are talking about. Explain it to
8 me. Can you give me assurance you wouldn't do that?

9 PROSPECTIVE JUROR: Yeah, I wouldn't do that.

10 THE COURT: Does anyone else have that
11 situation? No hands have been raised.

12 You all heard the charges in the case. It's
13 two charges. You heard other individuals talk a little
14 bit about it. It involves a child. You also heard me
15 say to some jurors, we all either have children, know
16 children, or relatives to children whether it is an
17 aunt, uncle, Godparents, whatever the situation may be.
18 What I need to know from you, not whether or not this
19 case makes you uncomfortable. I think a trial, no
20 matter what the charge is, makes people uncomfortable.

21 What I need to know, does the nature of the
22 case, the little bit that you know about it, does the
23 nature of the case make it absolutely impossible for
24 you to sit as a juror, evaluate the evidence that comes
25 before you from the witness stand, apply it to the law

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1 that I give to you and come out with a fair and
2 impartial verdict in this case? If you just know you
3 simply cannot do that, raise your hand, please.

4 THE COURT: Mr. Percoco.

5 PROSPECTIVE JUROR: I will try to be fair. I
6 always believe where there is smoke, there is fire. If
7 he didn't do anything, then why is he sitting there?

8 THE COURT: Let me say to everybody, I
9 understand that might be someone's inner things. I
10 need to know from each of you, so far you have given me
11 the assurance. You will not just assume and presume
12 that Mr. Ramos has done anything because you haven't
13 heard the evidence. I appreciate what you said, sir,
14 and I'm getting the sense you can't get past that.
15 This might not be the case for you. Is it accurate in
16 my saying you can't get past it?

17 PROSPECTIVE JUROR: Yeah, I tried.

18 THE COURT: I'd rather your honesty.

19 PROSPECTIVE JUROR: I didn't want to look at
20 him. I'm sorry.

21 THE COURT: Mr. Demott.

22 PROSPECTIVE JUROR: Same thing. All I could
23 think about is my teenage daughters right now. I think
24 I'm already jumping to conclusions.

25 THE COURT: Any questions?

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1 MR. BERGER: Consent.

2 MR. PERRI: Consent.

3 THE COURT: Thank you very much for your
4 honesty. Mr. Percoco and Mr. Demott, you are both
5 excused from this case.

6 THE CLERK: Seat number three, Milton Allen,
7 A-L-L-E-N.

8 Seat number six, Constance Volpe, V-O-L-P-E.
9 Constance, first name, C-O-N-S-T-A-N-C-E. That's a
10 female.

11 THE COURT: Welcome, Mr. Allen and Ms. Volpe.
12 I know you have both been paying attention while you
13 were sitting in the back.

14 Mr. Allen, is there anything you need to tell
15 me, sir?

16 PROSPECTIVE JUROR: Yes, ma'am. I am child
17 care provider, for many years, and looking in the face
18 of those innocent children and to know that somebody
19 would abuse a child, it would be very hard for me to --
20 I don't think I would give a fair trial too because to
21 me, hurting a child, is hurting me.

22 THE COURT: Do you understand, Mr. Allen,
23 there is no proof that Mr. Ramos has done anything,
24 he's simply been accused of something, but there's
25 nothing that says he's actually done anything? Do you

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1 realize that?

2 PROSPECTIVE JUROR: Yes, I do.

3 THE COURT: Are you telling me you can't get
4 past just the charge?

5 PROSPECTIVE JUROR: It would be very hard,
6 your Honor, because just the thought of abusing a
7 child --

8 THE COURT: Thank you, sir.

9 Ms. Volpe, anything you need to tell me?

10 PROSPECTIVE JUROR: I have two doctors'
11 appointments, the 11th and the 18th, and I also have a
12 wedding out of the area on the 29th, if it did go that
13 long.

14 THE COURT: The wedding on the 29th, let's
15 put that to the side for a moment. The 18th, we're not
16 here, the 11th; what time is that appointment?

17 PROSPECTIVE JUROR: 11:15 a.m.

18 THE COURT: Is it an appointment that could
19 be rescheduled?

20 PROSPECTIVE JUROR: I could try to ask.

21 THE COURT: If you could reschedule, could
22 you sit then?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: I'll have you stay with us for a
25 while and we'll see how we work things out. The 29th

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1 is an outside date, so I think that's fine. I just
2 want to make sure you can reschedule the doctors'
3 appointments.

4 PROSPECTIVE JUROR: And the 18th. That was
5 the 19th, 20th and 21st for that week?

6 THE COURT: Correct.

7 PROSPECTIVE JUROR: How late is the day
8 usually, in case I need to do an evening appointment?

9 THE COURT: Everyone will be out of here no
10 later than 4:30 on any day. We break by 4:30, the
11 latest. Thank you very much.

12 Do either of the attorneys want to ask
13 Mr. Allen any questions?

14 MR. PERRI: No, your Honor.

15 MR. BERGER: No. I consented to Mr. Allen.

16 THE COURT: Very good. Thank you very much.
17 There's probably a different case that would be better
18 for you, sir.

19 PROSPECTIVE JUROR: Yes, your Honor.

20 THE CLERK: Seat number three, Ronald
21 Kratzer, K-R-A-T-Z-E-R.

22 THE COURT: Welcome.

23 PROSPECTIVE JUROR: How are you?

24 THE COURT: Have you been paying attention?

25 PROSPECTIVE JUROR: Absolutely.

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1 THE COURT: Anything you need to tell me?

2 PROSPECTIVE JUROR: No.

3 THE COURT: The next question for my entire
4 group up front here, you know that under our law a
5 police officer is no more or less believable solely and
6 simply because he or she is a police officer. Is there
7 any reason you cannot evaluate a police officer's
8 testimony for truthfulness and accuracy, just as you
9 would the testimony of anyone else? I need you to
10 raise your hand if you are sitting there saying, I
11 don't care if the evidence in front of me is that this
12 guy is lying. If he is a cop, he is telling the truth.
13 Does anybody have that belief they cannot evaluate a
14 cop's testimony like they would anyone else? Raise
15 your hand if you have that situation.

16 No hands have been raised.

17 During this trial you are not allowed to
18 visit or view the place where the crimes charged was
19 allegedly committed. In this case that location is
20 Park Avenue in Roosevelt, New York. Please raise your
21 hand and let me know if for any reason whether it's to
22 get back and forth, to come back and forth to home,
23 work or a friend's house; do any of you need to pass
24 Park Avenue in Roosevelt in coming to this case in your
25 daily lives?

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1 Let the record reflect no hands have been
2 raised.

3 Do any of you have any religious belief that
4 would prevent you from sitting in judgment of a person
5 and voting guilty or not guilty? Any religious beliefs
6 that are a problem? Raise your hand. No hands have
7 been raised.

8 Has anyone here ever served on a prior
9 criminal jury? I know we have at least one,
10 Mr. Mestino. Raise your hands, prior criminal. Let's
11 do criminal and civil jurors. Keep your hands up for
12 one moment.

13 Let's start with you, Mr. Collins.

14 PROSPECTIVE JUROR: Criminal in 1992, in the
15 borough of Queens. I was an alternate juror.

16 THE COURT: Obviously, you didn't get to the
17 end?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Anything about that experience
20 that makes you believe you can't do your job here in
21 this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: The next hand, I believe, I saw
24 and I might have it wrong in the front row, is there
25 anybody, number seven.

1 PROSPECTIVE JUROR: It was a criminal case in
2 New York City. It was prior to 1986.

3 THE COURT: Without telling me the verdict,
4 did you reach a verdict?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Is there anything about that
7 experience that makes you believe that you cannot sit
8 and be fair and impartial in this case?

9 PROSPECTIVE JUROR: Not at all.

10 THE COURT: You appreciate whatever law you
11 might have remembered from that time, you have to put
12 it out of your head, the law comes from me. Do you
13 appreciate that?

14 PROSPECTIVE JUROR: I do.

15 THE COURT: And could you follow that?

16 PROSPECTIVE JUROR: I can.

17 THE COURT: Mr. Clarke, criminal or civil?

18 PROSPECTIVE JUROR: Criminal and civil.

19 THE COURT: Here in Nassau County?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: How long ago, sir?

22 PROSPECTIVE JUROR: Ten years, or more.

23 THE COURT: Without telling me the verdict in
24 the criminal case, did you reach a verdict?

25 PROSPECTIVE JUROR: I was an alternate juror.

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1 THE COURT: What about the civil case,
2 without telling me the verdict, did you get to the
3 verdict in the civil case?

4 PROSPECTIVE JUROR: Settled.

5 THE COURT: Is there anything about those two
6 experiences that makes you believe you cannot sit here
7 as a fair and impartial juror?

8 PROSPECTIVE JUROR: No.

9 THE COURT: You will be able to follow my
10 instructions?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Ms. Kabinsky.

13 PROSPECTIVE JUROR: Yes. I believe I'm going
14 to say 30 years ago I was an alternate on a civil
15 malpractice.

16 THE COURT: Here in Nassau County?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Is there anything about that
19 experience that makes you believe you can't sit in this
20 case?

21 PROSPECTIVE JUROR: Could I say something
22 about this case? This case was covered in the Newsday.
23 Now that I'm sitting here, the defendant does look
24 familiar to me from Newsday.

25 THE COURT: I have to tell you, as you sit

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1 here, I have no idea if it was or was not. Let me give
2 you all quick instructions with regards to that. If
3 there is any news coverage of this case, or if there
4 has been prior news coverage of this case, you cannot
5 read, view, or listen to any accounts or discussions of
6 the case reported by newspapers, television, radio, the
7 Internet, or any other news media. You cannot research
8 any fact, issue, or law related to this case whether by
9 discussion with others, by research in the library, or
10 Internet, or by any other means or source. There's a
11 good reason for that. Your decision must be based
12 solely on the firsthand account of the evidence
13 presented to you in this courtroom. It may not be
14 based on some reporter's view or opinion, or upon your
15 own independent research. Does everyone understand
16 that instruction?

17 So to you, Ms. Kabinsky, I don't know whether
18 it was or was not, but I need to know, can you put out
19 of your mind any inquiry that is going on in your brain
20 right now with regards to, hey, was this covered, maybe
21 I'll go back and look? Can you give me your assurance
22 that you will not do that and whether or not it was
23 covered, you will explore whatever the newspaper said
24 because we all know how accurate newspapers are,
25 sarcasm. You need to actually make your decision from

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1 this courtroom and the evidence in this courtroom. Can
2 you do that now?

3 PROSPECTIVE JUROR: I will try my best.

4 THE COURT: When you say, try your best, that
5 gives me a little bit of a concern. It gives me pause.
6 Let me give you all a little story with regards to that
7 that goes along that line. Let's say you have a bucket
8 list and on the bucket list you want to jump out of an
9 airplane. You get up the courage to go do it. You go
10 through training up in the airplane with your
11 instructor. He says the last thing we have to do
12 before we jump, I have to check your backpack and shoot
13 and make sure you are good to go and then you have to
14 check mine. Once we give both each other the thumbs
15 up, we're good to go and then we'll jump. The
16 instructor checks the backpack first, you look at the
17 backpack. I can do this. I know I can do it. You
18 pull on the tabs. You are good to go, says the
19 instructor, and he says to you, all right, turn around.
20 I will try to check your straps. We'll see how it
21 goes.

22 Are you going to jump out of the plane when
23 he is trying to check your straps, or do you want to
24 make sure he does check your straps? You want to make
25 sure he does. We don't want anyone -- I appreciate the

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1 thought, I will try, but that concerns us. That means
2 it could go either way. I need to know that you will
3 put out of your mind whatever it is you think you
4 remember from a source that has nothing to do with what
5 is going to happen in this courtroom, and I need to
6 know that you will not go back and look it up. You
7 will not research this case, and you will decide this
8 case from the evidence alone presented here. If you
9 can't do that, that's okay. I need to understand from
10 you if you can give us that assurance.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Very good. Thank you very much.
13 Mr. Mastino, let's go through the questions.

14 PROSPECTIVE JUROR: Criminal.

15 THE COURT: Without telling me a verdict, did
16 you reach a verdict?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: That was obviously here in Nassau
19 County?

20 PROSPECTIVE JUROR: In Mineola.

21 THE COURT: How long ago approximately?

22 PROSPECTIVE JUROR: Greater than ten years.

23 THE COURT: I need you to be honest. I give
24 you that guarantee. I need to know, if there is
25 anything about that experience that makes you sit here

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1 now and say you know what, I can't do it again, I can't
2 do it with these two attorneys, I just can't do it; is
3 there anything like that going through your head?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Is there anything going through
6 your head that you are saying to yourself, this won't
7 be fair to the People, you know that, Mr. Berger, if he
8 is sitting here, I know exactly which way I'm voting.

9 PROSPECTIVE JUROR: No.

10 THE COURT: You will be able to listen to the
11 evidence, evaluate the evidence, and follow the law?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: I need to know now, has anyone
14 ever served on a grand jury, the one-month process?
15 Raise your hand if you ever served on a grand jury.
16 Let the record reflect no hands were raised.

17 The last question before I ask you, a quick
18 series of questions, has anyone here, other than
19 Mr. Valin, we know Mr. Valin's background. Does anyone
20 here have friends, family members, or themselves are in
21 law enforcement, within the court system, sheriff's
22 department, attorney general's office, district
23 attorney's office, anything like that law enforcement
24 related?

25 Number one, law enforcement, sir?

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1 PROSPECTIVE JUROR: My nephew is a lawyer.
2 His wife is an assistant DA in Manhattan.

3 THE COURT: I'll take the information first
4 and then I'll ask the group of questions to all of you.

5 Mr. Valin, other than yourself, is there
6 anything more that we need to know?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Number three.

9 PROSPECTIVE JUROR: I work for the FBI. I
10 have fellow members and friends in law enforcement.

11 THE COURT: Have you ever testified?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Ms. Argona.

14 PROSPECTIVE JUROR: I have an uncle and
15 friends who are police officers.

16 THE COURT: Tesler, anything?

17 PROSPECTIVE JUROR: My nephew's good family
18 friends were attorneys.

19 THE COURT: Are those criminal attorneys or
20 civil?

21 PROSPECTIVE JUROR: It's civil.

22 THE COURT: Is that here in Nassau County?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Ms. Volpe, anything?

25 PROSPECTIVE JUROR: My dad is a retired

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1 police officer, and I have three cousins who are police
2 officers.

3 THE COURT: Ms. Wisselman?

4 PROSPECTIVE JUROR: I'll work for a law firm.
5 My husband is an attorney.

6 THE COURT: Is that law firm here in Nassau
7 County?

8 PROSPECTIVE JUROR: It is.

9 THE COURT: Do you go to court for that law
10 firm?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Does that firm handle civil or
13 criminal matters?

14 PROSPECTIVE JUROR: Matrimonial and Family
15 Court.

16 THE COURT: Mr. Clarke, anything?

17 PROSPECTIVE JUROR: My father was on NYPD.
18 He was assigned to the academy. I have relatives in
19 law enforcement, and I have a lot of friends and
20 relatives who are attorneys, and I work with attorneys
21 every day in my job.

22 THE COURT: The job that you have, is that as
23 an attorney?

24 PROSPECTIVE JUROR: Civil cases.

25 THE COURT: Here in Nassau County?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you, yourself, ever testify?

3 PROSPECTIVE JUROR: No. Depositions.

4 THE COURT: Thank you.

5 Ms. Kubinsky, anything in the law enforcement
6 background or attorney background?

7 PROSPECTIVE JUROR: I have cousins, but I
8 don't see them. They are police in Suffolk and New
9 York City, but I don't see them.

10 THE COURT: Mr. McDonough.

11 PROSPECTIVE JUROR: Friends in law
12 enforcement.

13 THE COURT: Ms. Taxier.

14 PROSPECTIVE JUROR: Friend who is an
15 attorney, and a friend who is a judge.

16 THE COURT: The friend that is an attorney,
17 here in Nassau County?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Criminal or civil?

20 PROSPECTIVE JUROR: Civil.

21 THE COURT: The friend that is a judge here
22 in Nassau County?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Mr. Mastino?

25 PROSPECTIVE JUROR: Sister-in-law's husband

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1 is NYPD, and good friend is a court officer in
2 Hempstead criminal, and the other in Queens Criminal
3 Court.

4 THE COURT: Mr. Brotenberg.

5 PROSPECTIVE JUROR: A dear friend is a judge
6 in Glen Cove, and I have friends also that are
7 attorneys.

8 THE COURT: Nassau criminal or civil?

9 PROSPECTIVE JUROR: Criminal, and two cousins
10 NYPD.

11 THE COURT: Mr. Danen, anything?

12 PROSPECTIVE JUROR: Friends in law
13 enforcement.

14 THE COURT: I have an entire panel that has
15 someone that is in law enforcement, whether it be
16 yourself or a friend, or someone who is an attorney.
17 Here's where the questions goes. I need you to all
18 understand and appreciate a couple of things. One, you
19 have to give me an assurance that you are not going to
20 call your friend or your family member and say, hey,
21 I'm sitting on this case, I don't know what these
22 people are doing, can you fill me in on what's going
23 on? That's one. Is there anyone that cannot give me
24 assurance that you will not call your friends or your
25 family members to discuss this case if you are chosen

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1 as a juror? Raise your hand if you feel like you know
2 I live with the person, how am I not supposed to
3 discuss. If that's your situation, raise your hand.

4 To all of you who know attorneys, the law as
5 to you will come from me. That's it. If you don't
6 understand the law, you will be given instructions on
7 what you need to do with regards to that. I need an
8 assurance from each of you that you will get the law
9 from me and me alone, and not call your friends who are
10 judges, or attorneys and ask them to explain the law to
11 you. Raise your hand if you feel like you just can't
12 do that. You are the type of person who will have to
13 ask somebody else for your opinion.

14 Let the record reflect no hands have been
15 raised.

16 Additionally, I need to know, each of you
17 with all of this familiarity with law enforcement, can
18 you each give me that assurance, that you will not
19 treat the individuals who come into this courtroom that
20 are law enforcement differently than you would treat
21 the civilians that come into this courtroom as
22 potential witnesses? Raise your hand if there will be
23 an issue with that.

24 PROSPECTIVE JUROR: The only thing I have
25 to -- I hold police with the highest regard. That's

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1 respect, integrity to be police officers, tremendous.

2 THE COURT: I imagine in holding them in the
3 highest regard you also hold them to a higher standard
4 of how they need to behave?

5 PROSPECTIVE JUROR: Correct.

6 THE COURT: Will you evaluate them fairly
7 with regards to their testimony when they come into
8 this courtroom and testify?

9 Mr. Brottenberg, have you ever known -- not
10 personally, have you ever been in a situation where you
11 said yourself, that that police officer is really
12 messed up, he did a bad job, or he did something wrong?

13 PROSPECTIVE JUROR: Me personally, no.

14 THE COURT: Have you ever been in a situation
15 where you heard something in news coverage, or you
16 listened to something and said I would be that guy that
17 could be in trouble, that doesn't --

18 PROSPECTIVE JUROR: I look at everybody
19 objectively. Honestly, I don't put too much credence
20 in what I read in the paper.

21 THE COURT: You want to hear the evidence?

22 PROSPECTIVE JUROR: Yeah, it could be swayed.
23 Newspaper articles, radio, anything.

24 THE COURT: Do you appreciate, or do you
25 believe that an officer can lie?

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1 PROSPECTIVE JUROR: Yeah, I think anybody can
2 lie.

3 THE COURT: Do you believe an officer could
4 tell the truth?

5 PROSPECTIVE JUROR: Yes, I believe they will
6 tell the truth more than they will ever lie.

7 THE COURT: Anyone else have anything they
8 need to discuss with me on that topic?

9 I'll ask you all general questions now, and
10 then we'll take a lunch break and then right after the
11 lunch break when you come back the attorneys will ask
12 you their questions and then we'll go from there.

13 Starting with you, Mr. Collins, tell me
14 please, sir, in what town do you reside?

15 PROSPECTIVE JUROR: Massapequa.

16 THE COURT: How long have you been there,
17 sir?

18 PROSPECTIVE JUROR: Since 2012. Almost 13
19 years.

20 THE COURT: What is the highest level of
21 school that you have attended?

22 PROSPECTIVE JUROR: College.

23 THE COURT: Do you have a degree, sir?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Do you work?

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1 PROSPECTIVE JUROR: No.

2 THE COURT: Are you retired?

3 PROSPECTIVE JUROR: Social Security.

4 THE COURT: Prior to getting to Social
5 Security, what type of work did you do, sir?

6 PROSPECTIVE JUROR: Unemployed for twenty-two
7 years. Temporary, a day here and so on.

8 THE COURT: Are you married?

9 PROSPECTIVE JUROR: Single.

10 THE COURT: Children?

11 PROSPECTIVE JUROR: As far as I know, no.

12 THE COURT: That's extremely honest. How do
13 you like to spend your spare time, sir?

14 PROSPECTIVE JUROR: Listen to music.

15 THE COURT: Mr. Collins, are you on social
16 media?

17 PROSPECTIVE JUROR: No.

18 THE COURT: No Facebook?

19 PROSPECTIVE JUROR: No.

20 THE COURT: No blog?

21 PROSPECTIVE JUROR: No.

22 THE COURT: I'll have to save my comments for
23 the next person then.

24 Let's turn to number two.

25 PROSPECTIVE JUROR: East Atlantic Beach, New

Proceedings

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1 York.

2 THE COURT: How long have you been there?

3 PROSPECTIVE JUROR: Since 1985.

4 THE COURT: Highest level of school?

5 PROSPECTIVE JUROR: Some college.

6 THE COURT: Any sort of associate's degree or
7 diploma from college?

8 PROSPECTIVE JUROR: No.

9 THE COURT: We know that you did work, you're
10 retired now, sir?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Do you have any other employment
13 as a retired officer?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Are you married?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Any children?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: How many?

20 PROSPECTIVE JUROR: Two.

21 THE COURT: Grown or school age?

22 PROSPECTIVE JUROR: I'm sorry?

23 THE COURT: Grown or school age?

24 PROSPECTIVE JUROR: Grown.

25 THE COURT: What do they do for a living?

Proceedings

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1 PROSPECTIVE JUROR: Son is a counselor, and
2 my daughter is a clerical worker.

3 THE COURT: What do you do like to do with
4 your spare time?

5 PROSPECTIVE JUROR: I ride motorcycles, I
6 shoot, and I bowl, and I cook.

7 THE COURT: That keeps you busy?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Are you on social media?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Do you have a Facebook page?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: When you woke up this morning,
14 did you write Mineola criminal courts to update your
15 status?

16 PROSPECTIVE JUROR: No.

17 THE COURT: I need to get assurance from all
18 of you who are on social media that if you are picked
19 as jurors, you will not discuss this case, whether it
20 be a private message, no PMing and no posting with
21 regards to jury service.

22 Mr. Valin, can you give me assurance you will
23 not use social media to discuss this case if you are
24 chosen?

25 PROSPECTIVE JUROR: You have my assurance,

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1 your Honor.

2 THE COURT: Do you also blog?

3 PROSPECTIVE JUROR: No.

4 THE COURT: For anyone who likes to blog, you
5 cannot blog about this case if you are chosen as a
6 juror. Just keep that in mind as I get to each of you.
7 Thank you very much.

8 Number three, town.

9 PROSPECTIVE JUROR: Massapequa.

10 THE COURT: How long?

11 PROSPECTIVE JUROR: Twenty-one years.

12 THE COURT: Highest level of school?

13 PROSPECTIVE JUROR: Associates.

14 THE COURT: In what?

15 PROSPECTIVE JUROR: Electronics.

16 THE COURT: Married?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Children?

19 PROSPECTIVE JUROR: Yes, one.

20 THE COURT: Does your spouse work?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: What does he or she do?

23 PROSPECTIVE JUROR: School teacher.

24 THE COURT: Child school age or graduated?

25 PROSPECTIVE JUROR: Grade school.

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1 THE COURT: Grade school?

2 How do you like to spend your spare time?

3 PROSPECTIVE JUROR: Family.

4 THE COURT: Blogging?

5 PROSPECTIVE JUROR: No, social media.

6 THE COURT: Number four.

7 PROSPECTIVE JUROR: Town?

8 THE COURT: Town.

9 PROSPECTIVE JUROR: Williston Park.

10 THE COURT: How long have you been there?

11 PROSPECTIVE JUROR: About twenty years.

12 THE COURT: Highest level of school?

13 PROSPECTIVE JUROR: High school diploma and
14 certification in trade school.

15 THE COURT: Do you work?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: What do you do?

18 PROSPECTIVE JUROR: I baby-sit, dog groomer
19 and manage a gelato store.

20 THE COURT: Are you married?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Children?

23 PROSPECTIVE JUROR: No.

24 THE COURT: How do you like to spend your
25 spare time?

Proceedings

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1 PROSPECTIVE JUROR: Quadding, motorcycles.

2 THE COURT: Social media?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Can you give me that assurance
5 you will not talk about this case if you are chosen as
6 a juror?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Let's turn to Ms. Tessler. What
9 town do you live in?

10 PROSPECTIVE JUROR: Port Washington.

11 THE COURT: How long have you been there?

12 PROSPECTIVE JUROR: Since 1992.

13 THE COURT: Highest level of school?

14 PROSPECTIVE JUROR: Master's degree.

15 THE COURT: In what?

16 PROSPECTIVE JUROR: Logistics.

17 THE COURT: Are you retired?

18 PROSPECTIVE JUROR: Yes, retired.

19 THE COURT: From what?

20 PROSPECTIVE JUROR: Photography.

21 THE COURT: Do you have any children?

22 PROSPECTIVE JUROR: Yes, two.

23 THE COURT: Are they grown or school age?

24 PROSPECTIVE JUROR: One grown. One is in the
25 Peace Corps in Africa, and the other one is still in

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1 the University in Montreal.

2 THE COURT: How do you like to spend your
3 spare time?

4 PROSPECTIVE JUROR: Hiking, sailing, be with
5 my friend.

6 THE COURT: Social media?

7 PROSPECTIVE JUROR: Very rarely.

8 THE COURT: Don't pick up the bug and start
9 being on it.

10 Let's turn to Ms. Volpe. What town?

11 PROSPECTIVE JUROR: Bethpage.

12 THE COURT: How long?

13 PROSPECTIVE JUROR: Fifty years.

14 THE COURT: Highest level of school?

15 PROSPECTIVE JUROR: Master's degree.

16 THE COURT: In what?

17 PROSPECTIVE JUROR: Occupational therapy.

18 THE COURT: Are you married?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Significant other?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Children?

23 PROSPECTIVE JUROR: No.

24 THE COURT: How do you like to spend your
25 spare time?

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1 PROSPECTIVE JUROR: Cooking, reading,
2 exercising.

3 THE COURT: Social media?

4 PROSPECTIVE JUROR: Facebook.

5 THE COURT: Did you write down coffee cup
6 with court system next to it?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Don't start going on to discuss
9 this case if you are chosen as a juror.

10 Ms. Wisselman, what town?

11 PROSPECTIVE JUROR: Port Washington.

12 THE COURT: How long?

13 PROSPECTIVE JUROR: Twenty-seven years.

14 THE COURT: Highest level of school?

15 PROSPECTIVE JUROR: Graduate school. Human
16 development and child study.

17 THE COURT: Are you married?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Spouse?

20 PROSPECTIVE JUROR: Attorney.

21 THE COURT: Remind me, criminal or civil?

22 PROSPECTIVE JUROR: Matrimonial, family law.

23 THE COURT: Children?

24 PROSPECTIVE JUROR: Two.

25 THE COURT: Grown or school age?

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1 PROSPECTIVE JUROR: Grown. One is a
2 hospitality hotel manager, and the other is a business
3 analyst.

4 THE COURT: How do you like to spend your
5 spare time?

6 PROSPECTIVE JUROR: Tennis, biking,
7 traveling.

8 THE COURT: Social media for you?

9 PROSPECTIVE JUROR: Yes. But no, I did not.

10 THE COURT: You did not post about being here
11 and you give me assurance you wouldn't post about this
12 case. Thank you so much.

13 Mr. Clarke, town?

14 PROSPECTIVE JUROR: Garden City.

15 THE COURT: How long?

16 PROSPECTIVE JUROR: Twenty-five years.

17 THE COURT: Highest level of school?

18 PROSPECTIVE JUROR: Graduate school.

19 THE COURT: For what?

20 PROSPECTIVE JUROR: Business administration.

21 THE COURT: Are you married?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Does your spouse work?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Any children?

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1 PROSPECTIVE JUROR: Four.

2 THE COURT: Grown or school age?

3 PROSPECTIVE JUROR: Three out of school, one
4 is in college.

5 THE COURT: Did I ask you what you do for a
6 living?

7 PROSPECTIVE JUROR: I'm in insurance and
8 insurance claims.

9 THE COURT: How do you like to spend your
10 spare time?

11 PROSPECTIVE JUROR: Sports.

12 THE COURT: Are you on social media?

13 PROSPECTIVE JUROR: Very little.

14 THE COURT: Don't pick up the bug and go on
15 it now. Don't talk about this case on social media.

16 Ms. Kubinski, what town?

17 PROSPECTIVE JUROR: Glen Head since 1951.

18 THE COURT: Highest level of school?

19 PROSPECTIVE JUROR: Graduate school.

20 THE COURT: For what?

21 PROSPECTIVE JUROR: MSW, master's in social
22 work.

23 THE COURT: Do you work?

24 PROSPECTIVE JUROR: Retired from Nassau
25 County Department of Health.

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1 THE COURT: Married?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Any children?

4 PROSPECTIVE JUROR: No.

5 THE COURT: How do you like to spend your
6 spare time?

7 PROSPECTIVE JUROR: Reading, music.

8 THE COURT: With regards to your work, have
9 you ever been asked to testify in a courtroom?

10 PROSPECTIVE JUROR: Health Department, no. I
11 was very briefly with child services at DSS, but that
12 was like back in the '80's.

13 THE COURT: That employment, did you ever
14 have to testify in court?

15 PROSPECTIVE JUROR: In child services
16 certainly, yes.

17 THE COURT: How often did you testify?

18 PROSPECTIVE JUROR: Not very often.

19 THE COURT: Do you understand and appreciate
20 that you still need to follow whatever happens in this
21 courtroom with regards to this case if you are chosen
22 as a juror?

23 PROSPECTIVE JUROR: Of course.

24 THE COURT: Thank you.

25 Mr. McDonough, what town?

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1 PROSPECTIVE JUROR: Merrick.

2 THE COURT: How long?

3 PROSPECTIVE JUROR: Ten years.

4 THE COURT: Highest level of school?

5 PROSPECTIVE JUROR: Bachelor of science,
6 computer science.

7 THE COURT: Do you work?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What do you do?

10 PROSPECTIVE JUROR: Computer programmer.

11 THE COURT: Married?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Spouse?

14 PROSPECTIVE JUROR: Accountant.

15 THE COURT: Do you have any children?

16 PROSPECTIVE JUROR: No.

17 THE COURT: How do you like to spend your
18 spare time?

19 PROSPECTIVE JUROR: Playing sports and
20 sleeping.

21 THE COURT: Social media?

22 PROSPECTIVE JUROR: I am, and I wouldn't
23 post.

24 THE COURT: Thank you, sir.

25 Ms. Taxier, what town?

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1 PROSPECTIVE JUROR: Port Washington.
2 THE COURT: How long?
3 PROSPECTIVE JUROR: Three months.
4 THE COURT: Where were you before that?
5 PROSPECTIVE JUROR: Roslyn.
6 THE COURT: How long?
7 PROSPECTIVE JUROR: Twenty years.
8 THE COURT: Highest level of school?
9 PROSPECTIVE JUROR: Associates.
10 THE COURT: In what?
11 PROSPECTIVE JUROR: Liberal Arts.
12 THE COURT: Do you work?
13 PROSPECTIVE JUROR: Sales.
14 THE COURT: For what?
15 PROSPECTIVE JUROR: In Nordstrom.
16 THE COURT: Are you married?
17 PROSPECTIVE JUROR: Yes.
18 THE COURT: Spouse work?
19 PROSPECTIVE JUROR: Yes.
20 THE COURT: What does he or she do?
21 PROSPECTIVE JUROR: Sales, garment center.
22 THE COURT: Any children?
23 PROSPECTIVE JUROR: Yes, three.
24 THE COURT: School age?
25 PROSPECTIVE JUROR: Youngest in first year of

kmm

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1 college.

2 THE COURT: Older two are grown?

3 PROSPECTIVE JUROR: Working. My daughter is
4 a counselor, and my son is in recruiting.

5 THE COURT: Counselor for what?

6 PROSPECTIVE JUROR: Drug rehab.

7 THE COURT: And recruiting for what?

8 PROSPECTIVE JUROR: An on-line type of thing
9 for doctors' appointments. I don't even know.

10 THE COURT: How do you like to spend your
11 spare time?

12 PROSPECTIVE JUROR: Teach, cooking, TV.

13 THE COURT: Social media?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Will you give me your assurance
16 not to talk about the case?

17 Mr. Mastino, what town?

18 PROSPECTIVE JUROR: Syosset.

19 THE COURT: How long?

20 PROSPECTIVE JUROR: Forty-three years.

21 THE COURT: Highest level of school?

22 PROSPECTIVE JUROR: Bachelor in business.

23 THE COURT: Do you work?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: What do you do?

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1 PROSPECTIVE JUROR: Rep manager.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: What does your spouse do?

5 PROSPECTIVE JUROR: She is an aide in an
6 elementary school.

7 THE COURT: Children?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: How many?

10 PROSPECTIVE JUROR: Two.

11 THE COURT: School age?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: How do you like to spend your
14 spare time?

15 PROSPECTIVE JUROR: Just with the family.

16 THE COURT: Social media?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: Mr. Brottenberg, what town?

19 PROSPECTIVE JUROR: Glenn Head.

20 THE COURT: How long?

21 PROSPECTIVE JUROR: Six years. Glen Cove for
22 forty-two years.

23 THE COURT: Highest level of school?

24 PROSPECTIVE JUROR: Some college.

25 THE COURT: What do you do?

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1 PROSPECTIVE JUROR: Sales manager for
2 commercial construction supplying.

3 THE COURT: Are you married?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What does your spouse do?

6 PROSPECTIVE JUROR: Works in an elementary
7 school.

8 THE COURT: Do you have children?

9 PROSPECTIVE JUROR: Two children.

10 THE COURT: Grown or school age?

11 PROSPECTIVE JUROR: Both, one in elementary
12 and one in high school.

13 THE COURT: How do you spend your spare time?

14 PROSPECTIVE JUROR: Weight lifting and
15 coaching little league baseball.

16 THE COURT: Social media?

17 PROSPECTIVE JUROR: I am not.

18 THE COURT: Mr. Danen, you sat here quietly,
19 what town do you reside in?

20 PROSPECTIVE JUROR: Just moved back to
21 Levittown.

22 THE COURT: You just moved back to Levittown?
23 Where were you before that?

24 PROSPECTIVE JUROR: Service.

25 THE COURT: And I said, thank you for

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1 service.

2 What is your highest level of school?

3 PROSPECTIVE JUROR: Some college.

4 THE COURT: Do you work, sir?

5 PROSPECTIVE JUROR: Just got a job, yes.

6 THE COURT: Doing what?

7 PROSPECTIVE JUROR: Part time, grocery store.

8 THE COURT: Is it going to be a problem for
9 you to be here?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Are you married?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Do you have children?

14 PROSPECTIVE JUROR: No.

15 THE COURT: What do you like to do in your
16 spare time?

17 PROSPECTIVE JUROR: Motorcycle, play pool.

18 THE COURT: Social media?

19 PROSPECTIVE JUROR: Unfortunately.

20 THE COURT: Can you give me your assurance
21 that you won't talk about this case on social media if
22 you are chosen?

23 PROSPECTIVE JUROR: I will not.

24 THE COURT: Given the hour, here's what we'll
25 do, I will give you your lunch break at this point.

1 I'm going to ask that you listen to the court officers
2 and report wherever they tell you to report at 2:00
3 with the hopes we'll all be back in the courtroom no
4 later than ten after two so we can keep the process
5 going. Let me give you a couple of admonitions. You
6 don't know anything about the case. It's impossible to
7 talk about it. Even if you feel that urge to do so,
8 please try not to discuss this case because you must
9 keep an open mind throughout this process. You cannot
10 permit anyone to discuss this case in your presence, so
11 don't have anyone walk up to you and say, hey, are you
12 in Corrigan's courtroom? This is what I heard. Don't
13 let anyone talk to you about the case over the lunch
14 hour. Don't let the lawyers or witnesses talk to you
15 and just so you know, if we see you over the lunch
16 break, we'll ignore you. Don't take it personally.
17 That's what we have to do to avoid the appearance of
18 impropriety.

19 Don't run over to the park over in Roosevelt
20 and try to look at the area where the crime was
21 committed. Don't go on your phones to research whether
22 the case was in the media or not. You are not allowed
23 to do it. Have a great lunch and see you all around
24 two.

25 (Whereupon, a luncheon recess was taken.)

1 A F T E R N O O N S E S S I O N

2

3

4 THE CLERK: Indictment 742N of 2014, Daniel
5 Ramos. Appearances are noted on the record. Spanish
6 interpreter present. Prospective jurors are not
7 present.

8 MR. PERRI: People are ready.

9 MR. BERGER: Defendant ready.

10 THE COURT: Before I bring in the jurors, one
11 matter has come to my attention. There's an
12 outstanding motion.

13 MR. PERRI: It was buccal swab motion filed
14 in case. There was a suppression of any evidence at
15 the hearing. The buccal swab at the hearings was found
16 by the Court to be inadmissible and we're proceeding
17 forward on that evidence and so we withdraw that
18 motion.

19 THE COURT: We'll call --

20 MR. PERRI: During the luncheon recess, the
21 People and defense counsel did examine open and examine
22 the physical evidence. The People intend on presenting
23 in this case, included is a rape kit, a child's
24 underwear and child's pair of pajamas, as the carrying
25 detectives present the unsealed contain and allowed the

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1 defense to inspect the evidence.

2 THE COURT: Were you present?

3 MR. BERGER: I was.

4 THE COURT: You got to see whatever it is you
5 needed to see?

6 MR. BERGER: I did.

7 THE COURT: Anything else before I bring in
8 the jurors?

9 MR. PERRI: No, your Honor.

10 THE COURT: I will give you each twenty
11 minutes. If at some point when you are close to twenty
12 minutes, if you are making progress and you need to go
13 longer, give me the high sign. If you need additional
14 time, I could give it to you.

15 MR. BERGER: I could say I'll need additional
16 time. After the first round I don't need to take as
17 long. I would appreciate the Court's indulgence
18 especially in a case as sensitive as this.

19 THE COURT: I'm going to let you know when
20 we're at twenty minutes and you let me know if you need
21 additional time, and then I will give you additional
22 time.

23 MR. PERRI: Thank you, your Honor.

24 MR. BERGER: Thank you, your Honor.

25 (Whereupon, the jury panel entered the

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1 courtroom.)

2 THE CLERK: Let the record reflect the
3 presence of the properly seated juror.

4 Acceptable by the People?

5 MR. PERRI: Yes.

6 THE CLERK: Defense?

7 MR. BERGER: Yes.

8 THE CLERK: Both sides ready?

9 MR. PERRI: Yes.

10 MR. BERGER: Yes.

11 THE COURT: Welcome back. I hope you enjoyed
12 your lunch break. Without further delay, I'll allow
13 the attorneys to start to speak to you. I will give
14 you the reminder what the lawyers say at any time is
15 not evidence. Thus, what they are about to say to you
16 in their questions to you is not evidence. The
17 importance of this rule is you must decide the case on
18 the evidence, and not what the lawyers say and what I
19 say.

20 So, without any further delay, Mr. Perri, you
21 may inquire.

22 MR. PERRI: Ladies and gentlemen of the jury,
23 my name, again, is assistant district attorney Anthony
24 Perri. I'm representing the People of the State of New
25 York, the government in this case on behalf of Madeline

1 Singas, Acting District Attorney of Nassau County.

2 Now, first of all, I would like to thank you
3 for your service and taking your time out today and
4 possibly for several days in the future considering the
5 evidence in this case, and to explain to you that at
6 this stage of the trial, it's a unique stage in that
7 it's the only time myself or Mr. Berger will actually
8 interact with you back and forth. This is the only
9 chance we'll get to ask you questions or you get to ask
10 us questions and there be an actual conversation
11 between us.

12 And part of the purpose of that is that both
13 sides are trying to find jurors that both fit this case
14 and themselves are going to be able to take it
15 seriously, be deliberative, consider all of the
16 evidence fairly and openingly, and work to a verdict in
17 this case at the end of it.

18 As we're talking with you today, we're
19 looking for honest answers, truthfulness, and for each
20 of you to be forthcoming as possible. If there are any
21 concerns you have at any level, why you would not be a
22 fair and impartial juror for this case, you need to
23 voice this now, even if it does require speaking in
24 private with the judge, the defense counsel.

25 For something you feel that is private, you

1 don't want to talk in a group, you can ask to do that
2 as well. The most important thing is to get a full and
3 clear answer to each and every one of you.

4 As you heard with the judge, who explained
5 the indictment, the accusation in this case, this is a
6 case about child sexual abuse. And that the allegation
7 in this case, this is just an allegation at this time,
8 is namely that the defendant is alleged to have had
9 oral sexual contact, meaning his mouth to the vulva and
10 vagina of the alleged victim, a six-year old child.
11 This is a painful topic. It's a serious case, as all
12 criminal cases, but it is also unique. And although,
13 already the judge has questioned you a bit about
14 whether or not you feel you will be able to sit, I want
15 to ask again, to each and everyone of you, if
16 understanding what the topic is, it's not that it's
17 easy. No jury deliberation is easy. No criminal case
18 to be a juror to sit, to sit through the evidence and
19 come to a decision is easy, because this case isn't
20 easy, doesn't mean you can be a fit juror to listen to
21 the evidence and to come to a verdict.

22 I would like to ask if there is anyone that
23 has had any experience in their family or close friends
24 dealing with cases that involve child abuse? Does
25 anyone know me or met me previously?

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1 Just specifically, Ms. Kubinski.

2 PROSPECTIVE JUROR: I knew you were going to
3 ask me.

4 MR. PERRI: You stated you worked for the
5 Department of Health, that you did at one point work
6 for child services, DSS?

7 PROSPECTIVE JUROR: Yes.

8 MR. PERRI: When you worked with DSS and
9 worked in child services, did you receive any
10 specialized training?

11 PROSPECTIVE JUROR: Yes.

12 MR. PERRI: Are you familiar with the term
13 forensic interview?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Were you trained as a forensic
16 interviewer?

17 PROSPECTIVE JUROR: No, but I'm familiar with
18 the term.

19 MR. PERRI: Did you work on cases where there
20 were allegations of child sexual abuse?

21 PROSPECTIVE JUROR: Both children services
22 and the Health Department, so both departments.

23 MR. PERRI: Do you feel comfortable having
24 had those experiences, being able to separate your
25 knowledge and expertise and be able to listen to the

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1 evidence in this case and decide this case on the
2 evidence and merits of this case?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: You did say, although, you worked
5 for DSS and child services, the last department you
6 worked for the Accounts Department?

7 PROSPECTIVE JUROR: No, the Health
8 Department.

9 MR. PERRI: What was your position in the
10 Health Department?

11 PROSPECTIVE JUROR: Medical social worker.

12 MR. PERRI: What is the job of a medical
13 social worker?

14 PROSPECTIVE JUROR: I was assigned to
15 different programs. First I was assigned to clinics.
16 I worked in Hempstead, Freeport, Roosevelt, Long Beach,
17 New Cassel, Elmont.

18 MR. PERRI: What did you do when you were
19 assigned to the Health Department?

20 PROSPECTIVE JUROR: I worked with the
21 children and families in the clinic.

22 MR. PERRI: Are you still working in that
23 capacity?

24 PROSPECTIVE JUROR: No.

25 MR. PERRI: When did you retire?

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1 PROSPECTIVE JUROR: December of 2007.

2 MR. PERRI: Was it your decision to move from
3 working with DSS to the Health Department?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: Why did you work in the Health
6 Department instead of DSS?

7 PROSPECTIVE JUROR: I wasn't that happy with
8 DSS. I felt like it was a difficult job. I didn't
9 have the support of the department.

10 MR. PERRI: Do you feel comfortable sitting
11 as a juror in this case dealing with one subset of the
12 kind of cases you may have handled at DSS?

13 PROSPECTIVE JUROR: I have seen it all, so I
14 have experience.

15 MR. PERRI: Are you able to separate yourself
16 from that experience and what you have seen in the past
17 and judge this case on the facts that are presented to
18 you in this case?

19 PROSPECTIVE JUROR: Yes.

20 MR. PERRI: There will be multiple types of
21 witnesses that the People intend to present, that we
22 intend to put before you, adult witnesses, civilians,
23 members of law enforcement, medical professionals,
24 scientific witnesses, but there is also -- it is the
25 People's intention in this case to present child

1 witnesses that will be called to testify in court. Is
2 there anyone here that feels uncomfortable, can't be
3 fair and impartial when listening and evaluating a
4 child witness who comes to call and testify?

5 Mr. Collins, how do you feel about listening
6 to a child witness?

7 PROSPECTIVE JUROR: It's okay with me.

8 MR. PERRI: Do you feel comfortable with the
9 Judge's direction on evaluating the testimony and
10 trying to decide whether or not you find them credible?

11 PROSPECTIVE JUROR: Yes.

12 MR. PERRI: Ms. Tesler?

13 PROSPECTIVE JUROR: Yes.

14 MR. PERRI: How do you feel? You are shaking
15 your head a little bit. How do you -- sorry to put you
16 on the hot seat. How do you feel about having to
17 listen to the testimony, not just adults, but also
18 children in this case?

19 PROSPECTIVE JUROR: The whole thing is, your
20 Honor, uncomfortable, but it's not a child, adult.
21 It's the same thing.

22 MR. PERRI: One of the instructions the Judge
23 has already given you and given to everyone, is
24 testimony is evidence, and that if you are given the
25 testimony of someone telling their story, explaining

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1 what happened to them, if you believe them beyond a
2 reasonable doubt, you find them credible and believe
3 them beyond a reasonable doubt, would you then feel
4 comfortable finding someone, finding a verdict based on
5 that evidence, finding someone guilty if you found a
6 witness's testimony credible beyond a reasonable doubt?

7 PROSPECTIVE JUROR: Yes.

8 MR. PERRI: Ms. Aragona, how do you feel
9 about that? Do you feel comfortable, testimony is
10 evidence, it's not just like on TV with SCI, videos,
11 that there is a moment where everything comes together,
12 people telling their stories; do you feel comfortable
13 with that?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: What would you use in judging
16 children and adults sitting up there in front of you or
17 strangers to them, telling what allegedly something
18 horribly traumatic that happens in their family, what
19 would you use to judge whether or not someone is
20 telling the truth?

21 PROSPECTIVE JUROR: Going by the evidence.
22 What you go by, both sides of the story.

23 MR. PERRI: You go by both sides of the
24 story. You heard the judge explain the defense has no
25 burden. The defendant does not, under the laws and the

1 Constitution of State of New York and Federal United
2 States, he does not have to testify.

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Do you feel comfortable with the
5 fact that the defendant does not have to testify and
6 that's the Judge's instructions?

7 PROSPECTIVE JUROR: Yes.

8 MR. PERRI: Will you hold it against him if
9 he doesn't take the stand and try to explain himself to
10 you?

11 PROSPECTIVE JUROR: No.

12 MR. PERRI: Ms. Tesler, will you follow the
13 Judge's instructions? You shook your head again. Will
14 you also follow the Judge's instructions that the
15 defendant doesn't have to take the stand?

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: The defendant doesn't have to put
18 on a case?

19 PROSPECTIVE JUROR: Yes.

20 MR. PERRI: When evaluating the credibility
21 of witnesses, I'll put forth the credibility of a child
22 witness. Does anyone disagree with the fact or the
23 idea that testimony, people react differently to
24 trauma, that every person doesn't react in the same
25 cookie cutter way?

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1 Ms. Taxier, do you believe people react to
2 the same trauma that occurs to them?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Would you expect every witness
5 that experienced the same incident to testify the exact
6 same manner?

7 PROSPECTIVE JUROR: No.

8 MR. PERRI: Now, would you believe that
9 different witnesses testifying about the same incident
10 could have different answers to some degree?

11 PROSPECTIVE JUROR: I would just think maybe
12 some memory could be blocked out so they might not be
13 fully aware of what happened at the time, so they may
14 not be one hundred percent on what happened. It may
15 differ.

16 MR. PERRI: You said you have three children?

17 PROSPECTIVE JUROR: Yes.

18 MR. PERRI: How old is your youngest child?

19 PROSPECTIVE JUROR: Nineteen.

20 MR. PERRI: Did your child have a 14th
21 birthday yet?

22 PROSPECTIVE JUROR: Did he have one? Yes.

23 MR. PERRI: Do you remember everyone at his
24 14th birthday?

25 PROSPECTIVE JUROR: No.

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1 MR. PERRI: Do you remember what he was
2 wearing on his 14th birthday?

3 PROSPECTIVE JUROR: No. I see what you are
4 getting at. Memory is an issue.

5 MR. PERRI: Does that mean your son or your
6 daughter didn't have a 14th or 18th birthday?

7 People also testified, talking about
8 witnesses' credibility, having connection in the family
9 to police officers, and just because you have family
10 members that are police officers or friends that are
11 police officers, or somehow involved in law
12 enforcement, doesn't necessarily mean that you have a
13 favorable opinion of law enforcement, and that it could
14 equally mean you have an opposite opinion.

15 I want to ask several people, they did say
16 they have connection to law enforcement.

17 Looking at Mr. Collins, you said there was
18 two, three years ago there was a robbery in your
19 apartment?

20 PROSPECTIVE JUROR: Yes.

21 MR. PERRI: How would you describe the police
22 conduct during that incident? Were you satisfied with
23 the police?

24 PROSPECTIVE JUROR: No, they came and looked
25 around and left. That's all.

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1 MR. PERRI: And I forget if you said, was
2 there an arrest made in that case?

3 PROSPECTIVE JUROR: No.

4 MR. PERRI: They never caught whoever it was?

5 PROSPECTIVE JUROR: No.

6 MR. PERRI: Have you had any other negative
7 interactions with the police?

8 PROSPECTIVE JUROR: No.

9 MR. PERRI: While I'm with you, Mr. Collins,
10 you had a variety of jobs that were temporary. What
11 were the last two jobs you had with respect to working?

12 PROSPECTIVE JUROR: From '75 to summer of
13 2010, first week of 2011, working at Jones Beach.

14 MR. PERRI: What did you do there?

15 PROSPECTIVE JUROR: We clean up a bit.

16 MR. PERRI: You said you are currently on
17 Social Security; is that a retirement benefit?

18 PROSPECTIVE JUROR: Disability.

19 MR. PERRI: For physical disability?

20 PROSPECTIVE JUROR: Yes.

21 MR. PERRI: Do you feel comfortable being
22 able to sit through the trial and listen to the
23 testimony?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: Ms. Taxier, you mentioned a very

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1 close friend was a judge?

2 PROSPECTIVE JUROR: Yes.

3 MR. PERRI: Who is that?

4 PROSPECTIVE JUROR: Rosemary Montelbano.

5 MR. PERRI: Where?

6 PROSPECTIVE JUROR: In Brooklyn.

7 MR. PERRI: Do you understand, as the judge
8 has instructed you, you can't reach out to your friend
9 who is a judge for advice, or questions, or bouncing
10 ideas off of that judge as with anyone connected to the
11 law or law enforcement during this trial?

12 PROSPECTIVE JUROR: Yes.

13 MR. PERRI: You have to say that out loud.

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Mr. Danen, you said you were in
16 the military?

17 PROSPECTIVE JUROR: Correct.

18 MR. PERRI: What branch?

19 PROSPECTIVE JUROR: Navy Corps with the
20 Marine Corps.

21 MR. PERRI: Were you deployed?

22 PROSPECTIVE JUROR: Stationed overseas for
23 three years.

24 MR. PERRI: Where were you stationed?

25 PROSPECTIVE JUROR: Iwakuni.

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1 MR. PERRI: I know you recently got out of
2 the service and thank you again for that. But, while
3 you were in the service, did you receive any
4 specialized training?

5 PROSPECTIVE JUROR: Medical training.

6 MR. PERRI: Were you a medical man?

7 PROSPECTIVE JUROR: I was.

8 MR. PERRI: Do you have long-term career
9 plans or ideas at this point?

10 PROSPECTIVE JUROR: Still going over there
11 dealing with family issues.

12 MR. PERRI: Not to pry too deeply, with
13 respect to whatever family issues you are having at
14 this time, will any of those interfere for you to
15 listen consistently as a juror in this case?

16 PROSPECTIVE JUROR: No.

17 MR. PERRI: You said you have friends in law
18 enforcement?

19 PROSPECTIVE JUROR: Old friends.

20 MR. PERRI: Are you currently in contact with
21 them?

22 PROSPECTIVE JUROR: Off and on.

23 MR. PERRI: Have you ever had any negative
24 interactions with law enforcement?

25 PROSPECTIVE JUROR: No.

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1 MR. PERRI: Ms. Volpe, you said you have your
2 father and some of your cousins who were police
3 officers?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: Have you had any negative
6 interactions with police officers?

7 PROSPECTIVE JUROR: No.

8 MR. PERRI: Are you able to fairly and
9 honestly judge their credibility, whether they are
10 telling the truth or lying, or whether they are to be
11 believed?

12 PROSPECTIVE JUROR: Yes.

13 MR. PERRI: I don't know if I misunderstood
14 you. You said you have a master's in occupational
15 therapy?

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: You currently work as an
18 occupational therapist?

19 PROSPECTIVE JUROR: Yes.

20 MR. PERRI: For a service, or on your own?

21 PROSPECTIVE JUROR: For the Catholic Health
22 System.

23 MR. PERRI: How long have you lived in
24 Bethpage?

25 PROSPECTIVE JUROR: All my life, fifty years.

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1 MR. PERRI: And do you currently reside with
2 anyone?

3 PROSPECTIVE JUROR: No.

4 MR. PERRI: We talked a little bit about this
5 with respect to witnesses that you will be judging the
6 facts, not the defense attorney, not myself, not to
7 judge the facts, it's your job. One of the things
8 we're looking for in jurors, you have common sense, if
9 you could apply your every day experiences and what you
10 learned about life and human nature to the question
11 that is put before you about whether or not the People
12 reached their burden. The Judge said the People's
13 burden is proof beyond a reasonable doubt. It's not
14 proof beyond all doubt. It's not certainty.

15 Ms. McDonough, do you feel comfortable as a
16 juror that the People don't have to prove their case to
17 a certainty?

18 MR. BERGER: Objection.

19 THE COURT: Overruled.

20 MR. PERRI: Do you feel comfortable with
21 following the Judge's instruction, the People don't
22 have to prove their case to a certainty, but have to
23 prove their case beyond a reasonable doubt?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: And, Mr. Clarke, do you also, do

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1 you agree if the People prove their case beyond a
2 reasonable doubt, if they put forth credible evidence
3 that meets their burden, you could find the defendant
4 guilty?

5 PROSPECTIVE JUROR: Yes.

6 MR. PERRI: And Mr. Valin, do you feel if the
7 People prove their case beyond a reasonable doubt, you
8 could be able to find the defendant guilty?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: Part of the role of a juror is
11 you will be able to be called on to deliberate, take an
12 oath to deliberate, reach your own conclusion as to
13 whether or not the defendant is guilty where the People
14 have reached their burden or not.

15 You can't, as the Judge will instruct you and
16 already instructed you, you can't make a compromise
17 because you want to get out of here. Everyone wants to
18 be done with their service as a juror.

19 Ms. Wisselman, if you were in the minority,
20 if you are deliberating in the minority and maybe even
21 you are against the other eleven jurors, you disagree
22 one way or another, what would you do as a juror during
23 deliberations if that were the case, if you were not in
24 the majority and you were in the minority?

25 PROSPECTIVE JUROR: I would probably try to

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1 suggest everybody present their reason for why they
2 feel the verdict should be one way or another, and I
3 would try to present my argument as well.

4 MR. PERRI: If that went on multiple days, if
5 that went on for two days, what would you do at that
6 point?

7 PROSPECTIVE JUROR: I would assume there is a
8 protocol if we couldn't come to a decision.

9 MR. PERRI: I'm asking you if there is a
10 point after two days, I'm going to throw up my hands
11 and say, I don't believe you guys are right to get this
12 done with.

13 PROSPECTIVE JUROR: No.

14 MR. PERRI: Ms. Tesler, how do you feel about
15 that? If you are in the minority and you can't
16 convince other people to your side, would you -- how do
17 you feel about being in that position?

18 PROSPECTIVE JUROR: I believe I wouldn't give
19 up.

20 MR. PERRI: And even if it took days?

21 PROSPECTIVE JUROR: Yes.

22 MR. PERRI: Mr. Mastino, what about you?
23 What would you do, in favor of your position during
24 deliberations in order to reach a verdict?

25 PROSPECTIVE JUROR: I would explain my

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1 rationale for my belief and listen to everybody else,
2 and see if we could hopefully come to an agreement at
3 that point.

4 MR. PERRI: Mr. Brottenberg, what about you,
5 that's if you were, if you were in the majority, if you
6 were on the majority initially and you get back to
7 deliberations, how would you work with people who agree
8 with you?

9 PROSPECTIVE JUROR: I would apply common
10 sense and facts of the case and say -- you know,
11 express my beliefs, why I feel strongly about them and
12 that's all anybody can really do.

13 MR. PERRI: Ms. Volpe, when you are examining
14 a witness, listening to a witness, deciding whether or
15 not to believe them, what would you listen for to use
16 to evaluate whether or not you should trust what they
17 are saying?

18 PROSPECTIVE JUROR: If they are consistent in
19 what they are saying, if there is no change in their
20 facts of what they believe happened to them.

21 MR. PERRI: Would you agree, when important
22 aspects, as the judge will instruct you on at some
23 point, whether or not the person has a motive to lie,
24 is something to gain?

25 PROSPECTIVE JUROR: I don't understand what

1 you are asking me.

2 MR. PERRI: Would you be looking for whether
3 or not there is a reason someone would lie?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: Ms. Aragona, aside from talking
6 about consistency, evidence, is there anything else you
7 would look for in listening to a witness in whether or
8 not they should be believed?

9 PROSPECTIVE JUROR: I'm sorry. You are
10 asking me what I would look for after they give
11 everything?

12 MR. PERRI: From your everyday life, common
13 sense to judge whether or not you should believe the
14 testimony of an individual.

15 PROSPECTIVE JUROR: How their stories go to
16 see if they are lying. I don't know, emotional-wise.

17 MR. PERRI: Would you agree it's not very
18 important whether or not you like the person?

19 PROSPECTIVE JUROR: Oh, yeah.

20 MR. PERRI: Do you think it's important that
21 you like every witness?

22 PROSPECTIVE JUROR: No.

23 MR. PERRI: Ms. Kubinski, do you have to like
24 every witness the People put forth to judge their
25 credibility?

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1 PROSPECTIVE JUROR: No.

2 MR. PERRI: Mr. Valin, do you have to like
3 every witness we put on the stand?

4 PROSPECTIVE JUROR: No.

5 MR. PERRI: Likability is something different
6 from credibility, not everyone you hear from is someone
7 you want to hang out with and go to dinner with. After
8 the trial is over, you may not want to see them again.
9 That doesn't get to the heart of whether or not the
10 defendant has been proven guilty beyond a reasonable
11 doubt.

12 THE COURT: Mr. Perri, it's been twenty
13 minutes. Do you need a few more?

14 MR. PERRI: Just one moment, your Honor.
15 Thank you, your Honor.

16 THE COURT: Mr. Berger.

17 PROSPECTIVE JUROR: Can I make a statement?

18 THE COURT: No, thank you.

19 MR. BERGER: Good afternoon, prospective
20 members of the panel. My name is Michael Berger and
21 I'm formerly from Brooklyn, New York, residing in Lake
22 Success in Nassau County for fifty years. If any of
23 you know me, with the exception of Mr. Mastino.

24 I have a lot of different questions than what
25 has already been asked by the Judge and by Mr. Perri.

1 I ask all of you in the back to pay attention too
2 because you will eventually be asked.

3 In addition, I'm going to be asking -- I may
4 pick on one person here. If the answer you would give
5 would be different or significant, you could tell
6 whether or not it would be important, raise your hand
7 and let me know. When I ask the question of one
8 person, I'm really asking all fourteen of you.

9 I must start out by saying, Mr. Perri and I
10 are looking to find fair-minded jurors, twelve neutral
11 jurors. We are asking our questions because we think
12 we know what questions should be asked in this kind of
13 case. There are no wrong answers here. If you give an
14 answer that you concede suggested prejudice, raise your
15 hand and let us know. Heaven forbid you were sitting
16 where Mr. Ramos was, you would want twelve neutral
17 fair-minded individuals sitting in judgment of you.

18 That's why we heard before, some people
19 expressed upset with respect to the nature of the
20 charges and they had to excuse themselves. I'm sure
21 there may be things in your mind in the next few
22 minutes that may, all of a sudden say, you know what, I
23 shouldn't sit on this case. It doesn't mean you are a
24 bad person, and it doesn't mean you could not be fair
25 in this case. It only means you shouldn't sit on this

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1 case. We all walk in here, we have an emotional side
2 and intellectual side. I'm looking for twelve
3 intellects to make a judgment. I can't ask you to
4 check your emotions at the door. I can ask you, do you
5 have an emotional side and saw some of the jurors, the
6 prospective jurors who excused themselves because their
7 emotions interfered and they knew their emotions would
8 interfere with their intellects.

9 Everyone has prejudices of some kind. It may
10 be you have a prejudice that emotional factors can
11 interfere. We're talking about the -- let me give you
12 a couple of emotional factors. I'm not saying they do,
13 but they may. We're talking about a six-year old
14 claiming she was licked by the defendant. That
15 obviously can create an emotional factor.

16 We're talking about the defendant who is
17 Hispanic, would anybody disagree there could be people
18 who are prejudiced against Hispanics?

19 Mr. McDonough, would you agree people could
20 be prejudiced against Hispanics?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERGER: Are you?

23 PROSPECTIVE JUROR: No.

24 MR. BERGER: Does anyone else feel Hispanics
25 are more inclined to commit crimes, or anything like

1 that?

2 Those are emotional factors, if they come up
3 during the questioning here, let us know. We can go up
4 to the bench and talk about it privately.

5 You heard the judge say that the People, the
6 prosecution have the burden of proving guilt here. I
7 don't have to prove anything. The point is that only
8 the prosecution have to convince you beyond a
9 reasonable doubt, to your satisfaction, the charges of
10 the indictment.

11 Does anybody here have an expectation that I
12 have to prove something; Ms. Wisselman?

13 PROSPECTIVE JUROR: No.

14 MR. BERGER: If I did not call one witness,
15 would that mean you would have to vote guilty?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: Why would that be?

18 PROSPECTIVE JUROR: It's the burden of the
19 district attorney to prove.

20 MR. BERGER: Does anybody disagree with her
21 answer? You know, has anybody, Mr. Mastino, did
22 anybody ever accuse you of something you didn't do in
23 your lifetime?

24 PROSPECTIVE JUROR: Absolutely.

25 MR. BERGER: You could respond to it or walk

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1 away. You have either one or two choices in that
2 situation. Just because somebody accuses you of
3 something, Mr. Allen, it doesn't mean you have to
4 respond. You could walk away, correct?

5 PROSPECTIVE JUROR: Absolutely.

6 MR. BERGER: Any two ways to deal with that.

7 You are going to be asked to evaluate the
8 witness's in this particular case, Ms. Volpe. I know
9 the prosecutor asked you before what you would use as a
10 criteria to evaluate if a person is telling the truth.
11 Do you know what -- you can't articulate that very
12 well. You say a different story, some of the obvious
13 things. Has anybody lied to you in lifetime?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: They didn't tell you I'm lying
16 to you. Nobody is getting on the witness stand, there
17 was once a prejudice, I could tell if they were lying.
18 If the witness said he was wearing a green hat, and I
19 saw he was wearing a red hat, then I know they weren't
20 being truthful. It wouldn't be that obvious.

21 In other words, when I asked Ms. Volpe if
22 anybody ever lied to her, she said, yes. The remaining
23 thirteen feel you don't possess that ability. There
24 are jurors who do feel they don't have the ability to
25 evaluate witnesses to see if they are being truthful.

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1 Does everyone feel you have that skill, correct? I'm
2 not asking you to articulate what you use, you know
3 what the criteria are, you are living in this world,
4 you understand?

5 Ms. Aragona, has anybody ever lied to you?

6 PROSPECTIVE JUROR: Yeah.

7 MR. BERGER: You will be asked to evaluate
8 credibility of witnesses?

9 Mr. Danen, do you think a civilian has ever
10 gotten on the witness stand and lied?

11 PROSPECTIVE JUROR: Of course.

12 MR. BERGER: Sworn to tell the truth and
13 lied?

14 PROSPECTIVE JUROR: Of course.

15 MR. BERGER: Does anybody disagree with that
16 answer?

17 Mr. Brottenberg, do you think a police
18 officer has gotten on the witness stand and lied?

19 PROSPECTIVE JUROR: Absolutely.

20 MR. BERGER: You did tell us before you hold
21 the police officers in the highest regard?

22 PROSPECTIVE JUROR: I do.

23 MR. BERGER: A higher regard than civilians?

24 PROSPECTIVE JUROR: Yeah, because they take
25 an oath.

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1 MR. BERGER: Police officers don't get
2 greater credibility than civilians.

3 PROSPECTIVE JUROR: I understand. That's my
4 personal opinion.

5 MR. BERGER: My concern is you would take
6 that personal opinion in evaluating the case here,
7 there will be testimony from police officers and
8 detectives, detectives who claim that the defendant
9 made a confession in this case, he put his name on a
10 piece of paper and that piece of paper says all kinds
11 of bad things. Do you think detectives have done that
12 and lied about it?

13 PROSPECTIVE JUROR: I'm sure there's
14 exceptions to every rule.

15 MR. BERGER: If you will give them an edge
16 that is contrary to what the Judge instructed before --
17 my question to you is: If you were sitting there and a
18 police officer testified against you -- you are someone
19 who wants a juror who says the police officer is in a
20 higher regard than civilians, correct?

21 PROSPECTIVE JUROR: I understand.

22 MR. BERGER: Does that mean you shouldn't sit
23 on this jury?

24 PROSPECTIVE JUROR: Maybe I shouldn't.

25 MR. BERGER: That's an honest answer. It has

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1 nothing to do with character. It only has to do with
2 your attitude and what they are right now, or whether
3 you should sit here in this case, or a civil case. I
4 appreciate your answer.

5 Mr. Valin, you are a former police officer.
6 You heard the questions I asked Mr. Brottenberg. Do
7 you think detectives have gotten on the witness stand
8 and lied?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: You would hold them -- would you
11 give them an edge in their testimony?

12 PROSPECTIVE JUROR: No.

13 MR. BERGER: What I'll be asking you to do,
14 all of you, I'll be asking you if somebody gets on the
15 witness stand and swears to tell the truth -- we don't
16 know how many people in the courtroom will tell the
17 truth. We don't know how many may not. I'm asking you
18 as a juror to start at point zero and be just as ready
19 to disbelieve as to believe; can you do that?

20 PROSPECTIVE JUROR: Yes, I can.

21 MR. BERGER: How about you?

22 PROSPECTIVE JUROR: I was just sitting here
23 thinking. I'm not sure.

24 MR. BERGER: Because you would give an edge
25 to a police officer?

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1 PROSPECTIVE JUROR: I think I might.

2 MR. BERGER: Thank you for that honest
3 answer.

4 Anybody else feel that, Ms. Volpe or
5 Mr. Brottenberg, does anybody feel they will give a
6 police officer an edge.

7 By the way, Ms. Kubinski, you said to us
8 before you have seen it all. Have you seen that
9 children sometimes make claims that haven't been true?

10 PROSPECTIVE JUROR: Yes.

11 MR. BERGER: Would you all agree just because
12 a six-year old makes a claim doesn't mean it's true,
13 Mr. Danen?

14 PROSPECTIVE JUROR: Of course.

15 MR. BERGER: Ms. Taxier, how about you?

16 PROSPECTIVE JUROR: I believe that's true. I
17 also think the emotional aspect of this case might be
18 too much for me.

19 MR. BERGER: Thank you so much for your
20 candor. See how late it has come up, the Judge asked
21 questions, the prosecutor asked questions and now even
22 at this late time when you rethink these things,
23 Ms. Taxier's honest and strong enough character to tell
24 us she shouldn't be sitting here because it's too
25 emotional for her. Does anybody else feel that way

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1 now?

2 PROSPECTIVE JUROR: I'm not sure why a
3 six-year old would have a motive to lie about something
4 like that. That's the only issue I have.

5 MR. BERGER: That's a very interesting
6 question. What was the nature of the case?

7 PROSPECTIVE JUROR: Also a criminal case.

8 MR. BERGER: The charge?

9 PROSPECTIVE JUROR: Similar kind of. It was
10 many years ago. I don't remember the exact specifics.
11 It involved a child and sexual abuse.

12 MR. BERGER: Mr. Mastino raised a very
13 interesting question. I'll pick on Mr. McDonough for
14 this, but I'm applying it to all of you. You
15 understand that you don't have to figure out the motive
16 that a person has to live. That's not required. All
17 you have to figure out is whether or not that person is
18 telling the truth. If you can only figure if that
19 person is telling the truth, not why he or she may not
20 be telling the truth. Nobody is expecting you to be
21 psychologists or psychiatrists. You are not expected
22 to analyze the witness. You will see them for a very
23 brief period of time here. All you have to figure out
24 is if they are being truthful, not why they are not
25 being truthful. Does everybody understand that? If

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1 you don't believe them, you don't believe them. Don't
2 say to yourself, if I can't figure out why they lied,
3 then they must be telling the truth. You are not
4 expected to figure that out. Does anybody understand
5 that; Mr. Fuentes?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Are you an FBI agent?

8 PROSPECTIVE JUROR: Electronics technician.

9 MR. BERGER: You have a kinship to the
10 prosecution because you work for the FBI?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: FBI agents have lied on the
13 witness stand.

14 PROSPECTIVE JUROR: You are sure.

15 MR. BERGER: You will keep open mind?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: Everybody with the exception of
18 Mr. Brottenberg and Ms. Volpe will agree with that?

19 Mr. Danen, let's assume you have no idea
20 whether the defendant is guilty or not guilty at this
21 point in time, that's why we have a trial.

22 PROSPECTIVE JUROR: Correct.

23 MR. BERGER: You may have belief that
24 seventy-two percent of the time people are charged with
25 crimes, they are guilty. Let's say you have belief,

1 you read newspapers, seen articles. I'm not saying you
2 considered that, but let's say you did. But you don't
3 know whether or not this is seventy-two percent or the
4 twenty-eight percent, correct?

5 PROSPECTIVE JUROR: Correct.

6 MR. BERGER: That's why we don't decide cases
7 based on percentage. As you sit here as jurors, you
8 don't decide, well, you know what, 95 percent of the
9 time I think witnesses tell the truth. Maybe that's
10 true or not. I don't know if studies were done. If
11 they had been, we don't know witnesses are in the fifth
12 percent or 95th percent.

13 PROSPECTIVE JUROR: Correct.

14 MR. BERGER: That's why we don't decide cases
15 based on percentage. We decide individual cases,
16 evaluate each individual witness, evaluate the cases.
17 That's why we have individual juries make individual
18 judgments on individual cases. Does everybody
19 understand that?

20 PROSPECTIVE JUROR: Yes.

21 MR. BERGER: Mr. Clarke?

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: Does anybody understand -- you
24 all understand you don't decide things based on
25 percentages?

1 If somebody, not sitting here, if there is
2 smoke, there is fire. If a person is accused of a
3 crime, they must be guilty. Do any of the rest of you
4 feel that way now? Does anyone have the slightest
5 feeling, he must be guilty, he wouldn't be sitting
6 here? Does anybody think that?

7 PROSPECTIVE JUROR: No.

8 MR. BERGER: Ms. Wisselman, are you just as
9 prepared to vote not guilty? Right now you are
10 prepared to vote guilty or not guilty based upon the
11 evidence and law that the Judge gives you. Are you
12 just as prepared to vote not guilty if it was a simple
13 trespass case, it wasn't the sexual abuse of a child?
14 Does the seriousness of this case make you feel you
15 need to bend over backwards for the prosecution?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: Does anybody feel that way?

18 I'm asking this question now, Mr. Clarke, you
19 think because a six-year old is making a claim here,
20 the defendant did something to her sexually, it must be
21 true?

22 PROSPECTIVE JUROR: No.

23 MR. BERGER: Would you be upset with me if I
24 have to vigorously cross-examine a six-year old when
25 she takes the witness stand?

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1 PROSPECTIVE JUROR: No.

2 MR. BERGER: Would you expect me to do that?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Would you expect me to do that?

5 PROSPECTIVE JUROR: It's your job.

6 MR. BERGER: If I was representing you, would
7 want me to do that and you evaluate witnesses?

8 Mr. Mastino, you mentioned before about the
9 motive. I made a point about a motive have occurred;
10 you are of that belief at this point?

11 PROSPECTIVE JUROR: I still have some doubt.

12 MR. BERGER: You need motive even though
13 nobody tells juries they have to figure out the motive?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Let me step in on that. Just so
16 I understand, are you saying you cannot be a fair and
17 impartial juror unless you are given a motive because
18 motive never plays a part in a criminal case. That's
19 the law. I'm giving you the law. Is that something
20 you could follow and get past?

21 PROSPECTIVE JUROR: I'm not sure if I could.

22 THE COURT: Thank you.

23 MR. BERGER: Do you think that a police
24 detective or officer has ever tricked or coerced
25 somebody into signing a statement which is against

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1 their interest?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Does anybody disagree with that
4 answer?

5 Let's say you are listening to the evidence
6 in this case, you hear something that the prosecution
7 puts forward that seems to be terrific evidence, could
8 you assure me you wouldn't say to yourself, that's it,
9 I heard enough, he's guilty. What I'm asking you to do
10 is, just remember what you heard, wait until the end of
11 the case, wait until the arguments of counsel, and then
12 see what it all means.

13 PROSPECTIVE JUROR: I think so. When you
14 say, terrific evidence for me, I mean --

15 MR. BERGER: Compelling, something you think
16 is compelling for the prosecution. You think, all
17 right, he is guilty, that kind of thing.

18 PROSPECTIVE JUROR: Listen to everything
19 until the duration of the trial?

20 MR. BERGER: Correct.

21 THE COURT: Let me step in on that. In fact,
22 I'll be giving you instructions that say you cannot
23 deliberate or make decisions in this case until the
24 case is over because until you hear the law from me,
25 you have no idea of the value of the evidence you are

1 hearing. You have to hear it, and you have to remember
2 it, and you have to evaluate it. Until you get the
3 law, it's impossible for you to make a decision. You
4 must all give me an assurance you will keep an open
5 mind throughout this entire process until we get to the
6 end. If you are someone that cannot keep an open mind
7 until the end of the case, let Mr. Berger know now.

8 MR. BERGER: I ask that notwithstanding the
9 Judge's instructions, some people come to a conclusion
10 and their mind is closed. I ask you to keep an open
11 mind throughout. You have now had a whole bunch of
12 time to consider some of the things I said and some of
13 the things Mr. Perri said, and the Judge, with respect
14 to being neutral and fair minded. I ask you this
15 individually, not collectively.

16 If you were the defendant sitting there and
17 there were twelve Mr. Collins in your frame of mind
18 judging, would you be satisfied with the twelve
19 Mr. Collins judging you? Are you so fair minded at
20 this point in time you would believe twelve
21 Mr. Collins?

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: How about you, Mr. Valin?

24 PROSPECTIVE JUROR: Yeah, but I have a
25 problem. My problem is this: How can you say to a

1 prosecution, let a six-year old testify. Has that
2 happened before? Is that common?

3 THE COURT: I'm going to step in on that.
4 That is not a question that at this point either side
5 is going to answer. What I'm going to tell you is
6 this, sir, we have a system of law here in New York.
7 It requires certain things to happen and the People to
8 prove their case in a certain way, and what the People
9 need to do to prove their case is what will happen.
10 You don't have to agree or like how the cases come
11 through the system. I just need to know you will
12 follow the law I will give to you and you will evaluate
13 the evidence as it comes before you here in this
14 courtroom. So if you do not feel, sir, you can fairly
15 evaluate the evidence and apply the law that I give,
16 then we need to know that now, and if you can, then
17 that's fine. There will not be an answer to that
18 question as that doesn't have a place within this jury
19 selection process; do you understand, sir?

20 PROSPECTIVE JUROR: Yes. If the Court allows
21 a six-year old to testify, I have no problem with that.

22 THE COURT: Fair enough. Thank you. Go
23 ahead, Mr. Berger. You can continue.

24 MR. BERGER: If you were sitting where
25 Mr. Ramos is, would you be satisfied with twelve

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1 Mr. Valin's sitting in judgment with you?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Are you fair minded?

4 PROSPECTIVE JUROR: Yes.

5 MR. BERGER: Just as prepared to vote guilty
6 or not guilty?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: You would be satisfied with
9 twelve of you, Mr. Allen?

10 PROSPECTIVE JUROR: Yes.

11 MR. BERGER: Ms. Aragona, are you that fair
12 minded?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERGER: Ms. Tesler, are you that fair
15 minded?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: Ms. Volpe, you indicated that
18 you are?

19 PROSPECTIVE JUROR: Yes, not too sure.

20 MR. BERGER: Ms. Wisselman?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERGER: Mr. Danen?

23 PROSPECTIVE JUROR: Yes.

24 MR. BERGER: Mr. Brottenberg, you indicated
25 you couldn't be?

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1 PROSPECTIVE JUROR: Yes. No.

2 MR. BERGER: And you too, Mr. McDonough,
3 would you be satisfied with twelve Mr. McDonough if you
4 were the defendant in this case?

5 PROSPECTIVE JUROR: Yes.

6 MR. BERGER: No trouble?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: How about you, Mr. Mastino?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: And Mr. Clarke?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Your twenty minutes are up. Do
13 you need more time?

14 MR. BERGER: A little more time. If you
15 would just tell me, I'm near the end.

16 I'll start with Mr. Collins. What newspapers
17 and magazines do you read?

18 PROSPECTIVE JUROR: Newsday. That's about it
19 lately.

20 MR. BERGER: You said you have your nephew's
21 wife is an ADA?

22 PROSPECTIVE JUROR: Assistant DA in
23 Manhattan.

24 MR. BERGER: Do you owe her any explanation?

25 PROSPECTIVE JUROR: No.

1 MR. BERGER: Mr. Valin, how about you,
2 newspapers, magazines?

3 PROSPECTIVE JUROR: Very rare. I get all of
4 the information from the Internet.

5 MR. BERGER: New day in age.

6 Mr. Allen.

7 PROSPECTIVE JUROR: Generally, I don't read
8 the papers. I get my information off the Internet as
9 well, as well as night news, news channels.

10 MR. BERGER: Ms. Aragona?

11 PROSPECTIVE JUROR: I read the newspapers. I
12 go by News 12. I don't read the newspaper.

13 MR. BERGER: Ms. Tesler?

14 PROSPECTIVE JUROR: I read the New York
15 Times. News most from the radio and television and
16 Time Magazine.

17 MR. BERGER: Ms. Volpe?

18 PROSPECTIVE JUROR: Mostly from television
19 news and Internet and radio.

20 MR. BERGER: Mr. Danen?

21 PROSPECTIVE JUROR: BBC, Internet or TV. No
22 local news. I prefer international.

23 MR. BERGER: Mr. McDonough, newspapers
24 magazines?

25 PROSPECTIVE JUROR: Newsday and reading the

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1 newspapers on-line, New York Times.

2 MR. BERGER: Ms. Kubinski?

3 PROSPECTIVE JUROR: Newsday and radio and
4 someone mentioned BBC.

5 MR. BERGER: Mr. Clarke?

6 PROSPECTIVE JUROR: Mostly on-line. Once in
7 a while newspapers.

8 MR. BERGER: You told us your father was a
9 New York City police officer?

10 PROSPECTIVE JUROR: Yes.

11 MR. BERGER: You have relatives and friends
12 who are also officers?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERGER: There will be police officers
15 testifying here for the prosecution in this case.
16 Should I be concerned about that?

17 PROSPECTIVE JUROR: No.

18 MR. BERGER: You don't owe them any
19 explanation?

20 PROSPECTIVE JUROR: No.

21 MR. BERGER: Your father may have been the
22 straightest man you ever met, but you wouldn't put his
23 -- place that on the people who testified here, would
24 you?

25 PROSPECTIVE JUROR: No.

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1 MR. BERGER: You would agree police officers
2 have lied on the witness stand?

3 PROSPECTIVE JUROR: I'm sure they have.

4 MR. BERGER: It's just an opinion, you
5 wouldn't know.

6 PROSPECTIVE JUROR: Everybody has.

7 MR. BERGER: Finally, if you would tell me if
8 you have bumper stickers on your car. I'm not
9 interested in politics; Mr. Collins.

10 PROSPECTIVE JUROR: Just I would rather be at
11 a Neil Diamond concert.

12 MR. BERGER: We were in the same class in
13 junior high school.

14 Mr. Valin?

15 PROSPECTIVE JUROR: FOP sticker. Term of the
16 police and national rifle association.

17 MR. BERGER: Mr. Allen?

18 PROSPECTIVE JUROR: None.

19 MR. BERGER: Ms. Aragona?

20 PROSPECTIVE JUROR: Marine sticker and a
21 Giants windshield sticker.

22 MR. BERGER: Are you talking military
23 Marines?

24 PROSPECTIVE JUROR: One of my good friends.

25 MR. BERGER: Ms. Tesler?

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1 PROSPECTIVE JUROR: NBR sticker.

2 MR. BERGER: Ms. Volpe?

3 PROSPECTIVE JUROR: No sticker.

4 MR. BERGER: Mr. Danen?

5 PROSPECTIVE JUROR: None.

6 MR. BERGER: Mr. McDonough?

7 PROSPECTIVE JUROR: No.

8 MR. BERGER: Mr. Kubinski?

9 PROSPECTIVE JUROR: No.

10 MR. BERGER: Mr. Clarke?

11 PROSPECTIVE JUROR: No.

12 THE COURT: We have a little bit of business
13 we need to conduct. This is the part you will step out
14 and we'll discuss who will be chosen as jurors, if
15 anyone. I'll ask everyone in the front to step out. I
16 also need everyone in the back to step out. We'll take
17 approximately five to ten minutes. Don't go too far.

18 (Whereupon, the jury panel exited the
19 courtroom.)

20 THE COURT: Are both sides ready to proceed?

21 MR. PERRI: Yes, your Honor.

22 MR. BERGER: Yes.

23 THE COURT: For cause. People, jurors one
24 through twelve for cause.

25 MR. PERRI: Juror number six, I ask her to be

1 excused for cause. She was equivocal as to whether or
2 not she would be able to put police to the same
3 standard as civilian witnesses and she said she could
4 give them an edge.

5 THE COURT: On consent?

6 MR. BERGER: Yes.

7 THE COURT: Number six is excused for cause.
8 Anyone else, People, one through twelve for
9 cause?

10 MR. PERRI: Juror number eleven, Ms. Taxier.

11 MR. BERGER: On consent.

12 THE COURT: Anyone else, cause, People? One
13 through twelve.

14 MR. PERRI: Juror number thirteen.

15 THE COURT: Only one through twelve.

16 MR. PERRI: I'm sorry.

17 Juror number twelve, your Honor, that he was
18 also equivocal.

19 MR. BERGER: Consent.

20 THE COURT: Juror six, eleven and twelve
21 excused for cause at this time.

22 Mr. Berger, any of those remaining jurors,
23 one through twelve for cause?

24 MR. BERGER: No, your Honor.

25 THE COURT: People, any perempts, the jurors

1 remaining between one and twelve? Any perempt
2 challenges, People?

3 MR. PERRI: Your Honor, the People would
4 exercise a perempt challenge to juror number one, juror
5 number five, and juror number -- I'm assuming one
6 through twelve?

7 THE COURT: Correct.

8 MR. PERRI: Juror number nine, your Honor.

9 THE COURT: People have a perempt for juror
10 one, juror five, juror nine, having used three
11 perempts.

12 Mr. Berger, any perempt for the defense,
13 jurors two, three, four, seven, eight, or ten?

14 MR. BERGER: Two.

15 THE COURT: Any perempts?

16 MR. BERGER: Yes. Four, eight.

17 THE COURT: Just going up to twelve.

18 MR. BERGER: That's it.

19 THE COURT: Juror number one will be Ronald
20 Cratzer, who is seated in seat three. Juror number two
21 will be Linda Wisselman who is seated in seat seven,
22 juror number three will be Michael McDonough, who is
23 sitting in seat number ten.

24 MR. PERRI: Yes, your Honor.

25 MR. BERGER: Yes, your Honor.

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1 THE COURT: People, cause challenges thirteen
2 or fourteen.

3 MR. PERRI: People exercise -- I ask the
4 Court to dismiss juror number thirteen.

5 MR. BERGER: Consent.

6 THE COURT: Juror number thirteen is excused
7 for cause. People, perempt on juror number fourteen?

8 MR. PERRI: Yes, your Honor.

9 THE COURT: We have three jurors that will
10 become seated. We'll bring them in and swear them in
11 and excuse them until Monday, agreed, People?

12 MR. PERRI: Yes, your Honor.

13 THE COURT: Agreed, defense?

14 MR. BERGER: Yes, your Honor.

15 (Whereupon, the jury panel entered the
16 courtroom.)

17 THE COURT: If the jurors in the front would
18 give their attention to the clerk.

19 THE CLERK: Do both sides stipulate to the
20 presence and properly seated jurors?

21 MR. PERRI: Yes, your Honor.

22 MR. BERGER: Yes.

23 THE CLERK: If your name is called, remain
24 seated. You are selected as a juror for this trial.
25 Juror number one will be Ronald Cratzer, juror number

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1 number two is Linda Wisselman, and juror number three
2 will be Michael McDonough. If your name has not been
3 called, follow the direction of the officer and step
4 out and you are released with the thanks of the Court.

5 THE COURT: Thank you, everyone. Enjoy the
6 rest of your day.

7 THE CLERK: Are the remaining jurors
8 satisfactory to the People?

9 MR. PERRI: Yes, your Honor.

10 MR. BERGER: And to the defendant.

11 (Whereupon, the jurors were duly sworn by the
12 clerk of the court.)

13 THE COURT: At this point the three of you
14 are going to be excused until Monday morning.

15 MR. BERGER: Could we come up for a second?

16 THE COURT: Sure.

17 (Whereupon, there was a sidebar discussion,
18 as follows:)

19 THE COURT: Come up for a second, please,
20 Mr. McDonough. I just want to privately talk to you.
21 I saw your reaction. Are you going to be able to do
22 this?

23 JUROR: I'm fine. I don't want to be on a
24 jury. That's my personal, nothing about the case
25 itself.

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1 THE COURT: You can be fair?

2 JUROR: I'm busy with work. I was hoping not
3 to be picked. It has nothing to do with the case
4 itself.

5 THE COURT: You can give us your undivided
6 attention and you will?

7 JUROR: I have to work from five to midnight
8 or one afterwards.

9 THE COURT: Mr. McDonough, do you think it
10 will interfere with your ability to focus here?

11 JUROR: I don't think so. I'll be honest. I
12 couldn't tell you.

13 THE COURT: What is your employment?

14 JUROR: I'm a computer programmer. I'm
15 working on a project, which is a lot bigger than me.

16 THE COURT: Are there other people on the
17 project?

18 JUROR: Yes, there's many people.

19 THE COURT: I don't want to get into a
20 situation where in a week from now you are falling
21 asleep in the chair.

22 JUROR: I'll be okay. I can't give you one
23 hundred percent certainty about something that hasn't
24 happened. I'll be okay.

25 THE COURT: We haven't crossed that bridge,

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1 but I want to make sure we don't get to that bridge.
2 You will be able to pay attention here? You can give
3 us your undivided attention and if you realize it's two
4 in the morning and you are still up working, that is
5 bad for us. I need your attention here. You will be
6 able to do that?

7 JUROR: Yes.

8 THE COURT: You are a young strapping guy?

9 PROSPECTIVE JUROR: I'm not that young.

10 THE COURT: Thank you.

11 (Whereupon, the proceedings resumed as
12 follows:)

13 THE COURT: I'm excusing the three of you
14 until Monday. I'll ask you to report here at 9:30
15 Monday morning and you will have different seats
16 because you are jurors one, and two, and three. You
17 will take the first three seats in the front row when
18 you come back here on Monday.

19 Before you leave let me remind you, you must
20 keep an open mind throughout this process. Please do
21 not discuss the case amongst yourselves or with anyone
22 else during this trial. Do not permit anyone to
23 discuss the case in your presence. Do not talk to the
24 lawyers, witnesses or the defendant about anything
25 during this trial, and do not view or visit the place

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1 where the charged crime was allegedly committed or any
2 other place involved in the case.

3 If there is new coverage of this case, do not
4 read, view, or listen to any accounts or discussions of
5 the case reported by the news media, and do not attempt
6 to research any fact, issue, or law related to this
7 case whether by discussion with others by research in
8 the library, or on the Internet, or by any other means
9 or source.

10 Enjoy the rest of your week. I'll see the
11 rest of you at 9:30 on Monday morning sharp.

12 (Whereupon, the selected jurors exited the
13 courtroom.)

14 THE COURT: Please refill the box.

15 THE CLERK: Seat number one, James Christie,
16 C-H-R-I-S-T-I-E.

17 Seat number two, Yang Park, Y-A-N-G, last
18 name P-A-R-K.

19 Seat number three, Joseph Guarino,
20 G-U-A-R-I-N-O.

21 Seat number four, Elizabeth Brown, B-R-O-W-N.

22 Seat number five, Edward McCaffrey,
23 M-C-C-A-F-F-R-E-Y.

24 Seat number six will be Toni Coleman,
25 T-O-N-I. Last name C-O-L-E-M-A-N.

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1 Seat number seven will be Maria Fusco,
2 F-U-S-C-O.

3 Seat number eight, Michael Pascucci,
4 P-A-S-C-U-C-C-I.

5 Seat number nine, Donald Moody, M-O-O-D-Y.

6 Seat number ten will be Linda DiNapoli,
7 D-I-N-A-P-O-L-I.

8 Seat number eleven will be Wendy Fernandez,
9 F-E-R-N-A-N-D-E-Z.

10 Seat number twelve will be Paul Aslav,
11 A-S-L-A-V.

12 Seat number thirteen will be Lucielle Cooper,
13 C-O-O-P-E-R. First name L-U-C-I-E-L-L-E.

14 Seat number fourteen will be Symone Williams,
15 S-Y-M-O-N-E. Last name W-I-L-L-I-A-M-S.

16 THE COURT: Symone Williams.

17 No appearance from him.

18 THE CLERK: Seat fourteen will be Jonathan
19 Cohen, C-O-H-E-N.

20 THE COURT: Welcome everyone to the front of
21 the courtroom. It took a little while, as we predicted
22 earlier, that you would eventually make it up here.
23 You heard everything going on. This round usually
24 works quicker. I give you the highlights to jog your
25 memory in case there's something you want to tell me.

1 Is anyone in the front of the courtroom now
2 having trouble with the English language? You heard me
3 ask the other potential jurors about following the law
4 as I have given to you and accepting certain principles
5 of law. Do you recall I asked you to accept one that
6 the defendant was presumed innocent. Two, that the
7 People have the burden of proof, guilt beyond a
8 reasonable doubt. And three, that the defendant, if
9 the defendant does not testify as a witness, that is
10 not a factor for which any inference unfavorable to the
11 defendant may be drawn.

12 Does anybody have a problem with following
13 those three concepts? Raise your hand if you do. No
14 hands have been raised.

15 If you are called, I asked the jurors this
16 morning, what I call type A personality, are you a
17 person that says, I'm right, I'm always right, it
18 doesn't matter what is right in front of your face
19 tells you what you believe is not accurate. If that's
20 you and you won't be able to deliberate, we need people
21 who can listen and exchange ideas. Raise your hand if
22 you are the type of person you believe can't deliberate
23 in this kind of situation. No hands have been raised.

24 I asked everyone to give me assurance that
25 you will decide the case without fear, favor, sympathy,

1 bias, or prejudice for or against the People, the
2 defendant, or any of the witnesses, be it a police
3 officer or civilians.

4 Does anyone have a problem with that, that
5 they need to discuss it on the record now? No hands
6 have been raised.

7 Do any of you know any of the attorneys in
8 the room, the defendant, any of my court staff, or
9 myself? If you believe you know us or we look familiar
10 to you, raise your hand and let us know. No hands were
11 raised.

12 I also read that list of witnesses earlier
13 today. Do any of you believe you know any of the
14 witnesses, potential witnesses, or names of individuals
15 you might hear during this trial? Raise your hand if
16 you think you know any of them.

17 Now, you heard me ask questions about health
18 issues. Does anybody here have a health issue that you
19 believe prevents you from sitting as a juror in this
20 case? That might include doctors appointments that
21 can't be switched, medication that makes it difficult
22 for you to concentrate, any health issues.

23 Ms. McCaffrey.

24 PROSPECTIVE JUROR: I request to be excused
25 privately.

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1 THE COURT: Step up.

2 (Whereupon, there was a sidebar discussion as
3 follows:)

4 PROSPECTIVE JUROR: My wife broke her ankle
5 in three places. She cannot walk, and I have an
6 eleven-year old daughter. My wife's money for her job
7 runs out in three weeks and her insurance runs out in
8 three weeks. I own my own landscaping business, 40
9 percent of which I lost with Hurricane Sandy and it was
10 never replaced by insurance. I have twenty accounts
11 left that I do most myself. By being here today --

12 THE COURT: I understand.

13 MR. BERGER: Consent.

14 MR. PERRI: Yes.

15 THE COURT: Thank you for your honesty. You
16 are excused.

17 I believe we saw another hand.

18 Mr. Christie.

19 PROSPECTIVE JUROR: I am Mr. Christie. I
20 have something unscheduled. I planned on scheduling a
21 surgery in June, early June.

22 THE COURT: We're going to be done by that
23 time. As long as we're done by June, you are good?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Mrs. Park.

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1 PROSPECTIVE JUROR: I cannot understand
2 English.

3 THE COURT: Any questions for Mrs. Park?

4 MR. BERGER: Consent.

5 MR. PERRI: Consent.

6 THE COURT: Does anyone else have a medical
7 -- she is excused her.

8 Does anyone else have a medical or health
9 issue?

10 THE CLERK: I'll seat number two, Mary
11 Caputo, C-A-P-U-T-O.

12 PROSPECTIVE JUROR: I should put it right out
13 there. I'm not -- I will not be a good juror. I work
14 for little children.

15 THE COURT: Consent.

16 MR. BERGER: Consent.

17 THE COURT: You may stop speaking. We'll
18 find another trial for you.

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: Seat number two, Haing Com Yu.
21 First name H-A-I-N-G, middle name C-O-M, last name Y-U.

22 PROSPECTIVE JUROR: Sorry. I don't
23 understand all.

24 THE COURT: Language issue?

25 MR. PERRI: Yes, your Honor.

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1 MR. BERGER: Consent.

2 MR. PERRI: Consent.

3 THE COURT: Seat number two, Deidra
4 Rodriguez, R-O-D-R-I-G-U-E-Z.

5 Seat number five, Gertrude Pinkney,
6 P-I-N-K-N-E-Y.

7 PROSPECTIVE JUROR: Judge, I'm not interested
8 in this case.

9 THE COURT: All right. Thank you for your
10 honesty, Ms. Pinkney.

11 MR. BERGER: Consent.

12 MR. PERRI: Yes, your Honor.

13 THE CLERK: Seat number five, Doris
14 Hernandez, H-E-R-N-A-N-D-E-Z.

15 THE COURT: Welcome, Ms. Rodriguez and Ms.
16 Hernandez. Is there anything with regards to
17 everything I asked so far up to health, either of you,
18 Ms. Rodriguez?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Ms. Hernandez?

21 PROSPECTIVE JUROR: No.

22 THE COURT: The next thing we discussed was
23 the length of the trial and dates you would be working.
24 Let me say them again so you have them and then I'll
25 take hands. If you are picked today you will not be

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1 expected to be back until Monday morning. We'll work
2 Monday through Thursday of next week, which is May 11th
3 through May 14th. We'll then work the following week,
4 the 19th, 20th and 21st, giving you the four-day
5 weekend for Memorial Day, and then we'll work the
6 following week, Tuesday through Friday. If it's
7 needed, the 26th through the 29th, raise your hand if
8 that's an issue for you, as far as timing. Keep those
9 hands up, please.

10 The first hand I saw was Mr. Guarino.

11 PROSPECTIVE JUROR: I have a scheduled
12 vacation starting next Wednesday.

13 THE COURT: Ms. Hernandez.

14 PROSPECTIVE JUROR: I go to school three days
15 a week.

16 THE COURT: School is not ending soon?

17 PROSPECTIVE JUROR: It ends in June.

18 THE COURT: Is that nighttime or daytime?

19 PROSPECTIVE JUROR: I go in the afternoon
20 until the evening.

21 THE COURT: Thank you.

22 Ms. Fusco.

23 PROSPECTIVE JUROR: I have a twenty-week
24 sonogram on the 27th. I have enough time to reschedule
25 it, but --

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1 THE COURT: Is that the only issue?

2 PROSPECTIVE JUROR: Only thing.

3 THE COURT: What time is it at?

4 PROSPECTIVE JUROR: Nine a.m.

5 THE COURT: I'll have you stick around. It's
6 possible we could either start a little later on the
7 27th, or if you have the ability to maybe make another
8 appointment, and if you need a letter from the Court
9 that you need a letter to expedite that, we can assist
10 in that regard.

11 Mr. Moody.

12 PROSPECTIVE JUROR: I'm planning a new
13 distribution for my company that we're supposed to move
14 into in early June. We're setting up computers and
15 everything like that.

16 THE COURT: That's not something else that
17 they can take on while you are here?

18 PROSPECTIVE JUROR: I'm the regional
19 director.

20 THE COURT: Thank you, sir.

21 Ms. Hernandez.

22 PROSPECTIVE JUROR: I have school-age
23 children, Catholic school. They do not have school
24 next Thursday. I'm the sole caregiver, and I have
25 school on the 13th and 27th.

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1 THE COURT: The school event, daytime or
2 nightttime?

3 PROSPECTIVE JUROR: Daytime events, 1:30 in
4 the afternoon and the other midday.

5 THE COURT: Thank you.

6 Ms. Cooper.

7 PROSPECTIVE JUROR: I'm assistant principal
8 with the Board of Education, New York City. The 11th,
9 12th and 13th we are at a luncheon in Westchester. My
10 principal was scheduled -- she has a court case in
11 Brooklyn. I'm designated to go there.

12 THE COURT: What days?

13 PROSPECTIVE JUROR: 11th, 12th and 13th.

14 THE COURT: And Ms. Williams?

15 PROSPECTIVE JUROR: Scheduled vacation,
16 prepaid vacation the week of the 18th. I have a sales
17 meeting I'm supposed to be leading the first two days
18 of next week.

19 THE COURT: Thank you.

20 Do the attorneys want to inquire further of
21 either any of the jurors sitting in following seats,
22 three, seat five, seat nine, eleven, thirteen or
23 fourteen?

24 MR. PERRI: No, your Honor.

25 MR. BERGER: No.

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1 THE COURT: Mr. Guarino, you are excused from
2 this case. Ms. Hernandez, you are excused from this
3 case. Mr. Moody, same thing. Ms. Fernandez, this case
4 is probably too long for you. Maybe another case will
5 be better. Ms. Cooper, and Mr. Cohen. Thank you all.

6 THE COURT OFFICER: Come with me, please.
7 Three, five, nine, eleven thirteen and fourteen.

8 THE CLERK: Seat number three, Robert
9 Finkelstein, F-I-N-K-E-L-S-T-E-I-N.

10 Seat number five, Stephan Andrey,
11 A-N-D-R-E-Y.

12 Seat number nine, William Dempsey,
13 D-E-M-P-S-E-Y.

14 Seat number eleven, Priscella Jergensen,
15 P-R-I-S-C-E-L-L-A. Last name, J-E-R-G-E-N-S-E-N.

16 Seat number thirteen, Julia Bello, B-E-L-L-O.

17 Seat number fourteen, John Jathmann,
18 J-A-T-H-M-A-N-N.

19 THE COURT: Welcome to the front of the
20 courtroom. I know you all have been listening
21 intensively. Do any of you have anything you need to
22 tell me regarding the issue we covered so far, the main
23 ones being at the moment, health, and timing, and of
24 course, whether or not you know any of us or have any
25 issues with the concept of law?

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1 Let me go down the row. Mr. Finkelstein.

2 PROSPECTIVE JUROR: My partner will be out of
3 town from the 11th to the 18th.

4 THE COURT: It's just the two of you?

5 PROSPECTIVE JUROR: We have employees but
6 we're the only two we can open up.

7 THE COURT: What time do you need to open up?

8 PROSPECTIVE JUROR: 7:00 a.m.

9 THE COURT: Is it the kind of business where
10 you don't have to be there if you could check in at
11 lunchtime and go at the end of the day?

12 PROSPECTIVE JUROR: I wish.

13 MR. BERGER: Ms. Rodriguez.

14 PROSPECTIVE JUROR: I have one question. On
15 the 20th I know you said we would probably be dismissed
16 at 4:30, like no later, as long --

17 THE COURT: Never later than 4:30.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: My Court staff will not allow it.
20 It will never be later than 4:30.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Mr. Andrey.

23 PROSPECTIVE JUROR: I'm an inspiring
24 professional boxer, and my fight is on the 21st of this
25 month, and I have another fight next week, Wednesday.

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1 So, remember my name.

2 THE COURT: I'll remember your name.

3 Seriously, I'm going to assume that involves a lot of
4 training?

5 PROSPECTIVE JUROR: About three to four times
6 a day.

7 THE COURT: Is it fair to state your mind
8 will not be with us?

9 PROSPECTIVE JUROR: Yes, that is it.

10 MR. BERGER: He might punch our lights out.

11 PROSPECTIVE JUROR: I don't think I have that
12 much courage to do that.

13 THE COURT: Mr. Dempsey is the next
14 individual to do that.

15 PROSPECTIVE JUROR: My daughter's grade
16 situation is the 21st.

17 THE COURT: What time?

18 PROSPECTIVE JUROR: It starts in the morning
19 and goes through the morning to the afternoon.

20 THE COURT: Here in Nassau or?

21 PROSPECTIVE JUROR: Adelphi.

22 THE COURT: Ms. Jergensen.

23 PROSPECTIVE JUROR: I'm good.

24 THE COURT: Ms. Bello.

25 PROSPECTIVE JUROR: I have surgery Wednesday

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1 at eleven o'clock.

2 THE COURT: Thank you.

3 Mr. Jathmann.

4 PROSPECTIVE JUROR: I have a cousin who was
5 an abused child. It came out after the person died.

6 THE COURT: Is the fact that something
7 happened to you, so close to you in this family, makes
8 you not good enough for you?

9 PROSPECTIVE JUROR: She told my aunt at one
10 point. Of course, it's a good Catholic family. That
11 doesn't happen.

12 THE COURT: Thank you, sir.

13 Counselors, any questions for the following
14 jurors, either number three, number five, number nine,
15 number thirteen, or number fourteen?

16 MR. BERGER: No, your Honor.

17 MR. PERRI: No, your Honor.

18 THE COURT: Consent?

19 MR. PERRI: Yes.

20 MR. BERGER: Yes.

21 THE COURT: Mr. Finkelstein, Mr. Andrey, good
22 luck to you. I'll remember your name. Mr. Dempsey,
23 enjoy the graduation. Ms. Bello, good luck to you.
24 Mr. Jathmann, you are excused with the thanks of the
25 court.

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1 Let's refill.

2 THE CLERK: Seat three, Jorge Niveyro,

3 N-I-V-E-Y-R-O, J-O-R-G-E.

4 Seat number five, Tommy Nieves, N-I-E-V-E-S.

5 Seat number nine, Carlos Ramirez,

6 R-A-M-I-R-E-Z.

7 Seat number thirteen, Diana Iorio, I-O-R-I-O.

8 First name Diana.

9 Seat number fourteen, Sima Moezinia,

10 M-O-E-Z-I-N-I-A.

11 I'm going to address each of you individually

12 to see if there is anything you need to tell me.

13 Mr. Nivegro, is there anything you need to

14 tell me?

15 PROSPECTIVE JUROR: Yes, you know, I take

16 care of my patients. Some of them suffer from suicide

17 tendency. I assist them 24/7. They have sessions with

18 me twice a week consistently, you know. They face hard

19 personal situations. They could have a suicide crisis

20 at any time.

21 THE COURT: Is that during the day, sir, your

22 work is during the day and night?

23 PROSPECTIVE JUROR: Yeah, yeah, yeah.

24 THE COURT: Thank you. I appreciate you

25 telling us.

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1 Mr. Nieves, is there anything you need to
2 share with me?

3 PROSPECTIVE JUROR: It hits home my sister
4 was molested as a child. I don't think that I would be
5 fair in this case.

6 THE COURT: Thank you, sir.

7 Mr. Ramirez.

8 PROSPECTIVE JUROR: I don't speak English
9 very well.

10 THE COURT: Thank you, sir.

11 Ms. Iorio.

12 PROSPECTIVE JUROR: Hi.

13 THE COURT: Is there anything you need to
14 tell me?

15 PROSPECTIVE JUROR: I'm fine.

16 THE COURT: Ms. Moezinia.

17 PROSPECTIVE JUROR: My English not so good.
18 I don't understand well.

19 THE COURT: Attorneys, any questions for
20 Mr. Niveyro, Mr. Nieves, Mr. Ramirez, or
21 Ms. Moezinia?

22 MR. PERRI: Consent.

23 MR. BERGER: No, your Honor. Consent.

24 THE COURT: If you heard your name you are
25 excused.

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1 THE CLERK: Seat number three, Emitope Oyewo,
2 E-M-I-T-O-P-E, last name O-Y-E-W-O.

3 THE COURT: Welcome to the front of the
4 courtroom. Last but not least. I appreciate your
5 patience. Is there anything you need to tell me?

6 PROSPECTIVE JUROR: It's about the timing.

7 THE COURT: The dates?

8 PROSPECTIVE JUROR: The time because I have
9 two jobs. I won't be able to participate in coming to
10 the court with all those days. And secondly, my
11 daughter is graduated the 28th of May.

12 THE COURT: Let's go to your job. Do you get
13 paid for jury duty? Do your jobs pay you?

14 PROSPECTIVE JUROR: My regular job, I know
15 they will pay me. It's with the State of New York. My
16 part-time job, my per diem job, I'm not sure.

17 THE COURT: Mr. Berger.

18 MR. BERGER: I would consent.

19 MR. PERRI: Consent.

20 THE COURT: I don't want you to have
21 financial hardship. There's probably a shorter trial
22 that would be better for you.

23 Let me go through some of the questions with
24 you. You heard me ask about whether you or anyone
25 close to you has ever been the victim of a crime,

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1 witness to a crime, convicted of a crime, or has a
2 pending criminal or civil case. Raise your hand if any
3 of those categories apply to you.

4 THE COURT: Ms. Rodriguez.

5 PROSPECTIVE JUROR: I was a child, but we
6 were burglarized, and my husband is in a civil case
7 right now.

8 THE COURT: A civil case here in Nassau
9 County?

10 PROSPECTIVE JUROR: No, it's in the city.

11 THE COURT: Is there anything about the fact
12 that years ago you were burglarized and your husband
13 has a civil case, will that get in the way of sitting
14 here as a fair and impartial juror?

15 PROSPECTIVE JUROR: No.

16 THE COURT: You appreciate and understand
17 this case has nothing do with the burglary you were
18 part of and a civil case and criminal case are
19 completely different sets of laws?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Did I see Ms. Brown, your hand
22 up?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Yes.

25 PROSPECTIVE JUROR: I'm a victim of a crime.

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1 I also work in Roosevelt on the weekend.

2 THE COURT: As a victim of a crime, that was
3 here in Nassau County?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Was it recent?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Was it solved? Was somebody
8 arrested?

9 PROSPECTIVE JUROR: Kind of.

10 THE COURT: How long ago was it?

11 PROSPECTIVE JUROR: Twenty years.

12 THE COURT: Anything about the fact that
13 twenty years ago you were a victim of a crime, will
14 that get in the way of being able to sit in this case
15 and fairly evaluate the evidence in this case?

16 PROSPECTIVE JUROR: I don't think it has
17 anything to do with this case, the nature of this case.

18 THE COURT: You said something about working
19 on the weekend. Why is that a concern to you?

20 PROSPECTIVE JUROR: You mentioned Roosevelt
21 Park.

22 THE COURT: It's actually a street in
23 Roosevelt, Park Avenue. Do you have any reason to be
24 near Park Avenue in Roosevelt?

25 PROSPECTIVE JUROR: Yeah. That's where I do

1 my weekend job.

2 THE COURT: Is the specific address, is it
3 124 Park Avenue, it's a private residence, do you have
4 any reason --

5 MR. PERRI: It's partially a private
6 residence, partially a business.

7 THE COURT: It's a mixed business and
8 residence. Do you have any reason with your job to
9 have to go to 124 Park Avenue?

10 PROSPECTIVE JUROR: It's off Park Avenue.

11 THE COURT: Your job is off of Park Avenue?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: The reason we ask that question,
14 it's not fair if you have some sort of knowledge of a
15 location outside of the courtroom, it's not fair that
16 you might use that knowledge of that location where
17 nobody else has that same shared knowledge. I need to
18 know from you, can you, even if you drive by 124 Park
19 Avenue on your way to work, can you give us an
20 assurance that you will not stop and start looking at
21 the location and figure out where things happened and
22 how it happened? Can you give me that assurance if you
23 happen to drive by it, because that's how you have to
24 go to work. I understand. Maybe you can find a
25 different road to get to work and not have to pass 124

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1 Park Avenue?

2 PROSPECTIVE JUROR: That's the only road I
3 know.

4 THE COURT: Where is that that you will work
5 on the weekend?

6 PROSPECTIVE JUROR: 560 Roosevelt Avenue.

7 THE COURT: I'll have you sit there for a few
8 minutes. I'm sure there will be additional questions
9 for you.

10 Ms. Coleman.

11 PROSPECTIVE JUROR: I also live in Roosevelt.

12 THE COURT: The fact that you live in
13 Roosevelt doesn't mean you can't sit on this jury. Can
14 you give me assurance you will not go pitch a tent out
15 to 124 Park?

16 PROSPECTIVE JUROR: Definitely.

17 THE COURT: Ms. Fusco.

18 PROSPECTIVE JUROR: My cousin was convicted
19 of a crime. I have no idea it what it was. I was too
20 young.

21 THE COURT: It will not have an impact on you
22 sitting on this case; is that correct?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Was it here in Nassau?

25 PROSPECTIVE JUROR: No, Florida.

1 THE COURT: Mr. Pascucci, did you have your
2 hand up?

3 PROSPECTIVE JUROR: Yes, I did. I'm a
4 retired New York City police lieutenant. I witnessed
5 many crimes.

6 THE COURT: You heard in the first round we
7 had law enforcement on in the chairs. I want to cut to
8 the chase, will you be able to sit here as a fair and
9 impartial juror as given your prior service?

10 PROSPECTIVE JUROR: I could sit here and be
11 fair and impartial.

12 THE COURT: Thank you very much.

13 Ms. DiNapoli, did you have your hand up?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Ms. Jergensen?

16 PROSPECTIVE JUROR: My brother was convicted
17 of a crime.

18 THE COURT: Here in Nassau?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Recent?

21 PROSPECTIVE JUROR: About ten years ago.

22 THE COURT: Would you mind sharing what it
23 was?

24 PROSPECTIVE JUROR: For a DWI and
25 manslaughter.

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1 THE COURT: Was there a trial?

2 PROSPECTIVE JUROR: Yeah.

3 THE COURT: Did you attend?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Is there anything about that
6 process that leaves a bad taste in your mouth whether
7 for the prosecution, defense?

8 PROSPECTIVE JUROR: No, it was pretty cut and
9 dry.

10 THE COURT: Do you feel he was treated fairly
11 by the system?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Is there anything about that fact
14 that impedes your ability to sit here in a completely
15 different case having nothing to do with what happened
16 to your family member and make a judgment in this case?

17 PROSPECTIVE JUROR: Yeah, I should be fine.

18 THE COURT: Ms. Aslav, was your hand up?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Ms. Iorio?

21 PROSPECTIVE JUROR: My brother's pending
22 criminal case, I think, in Queens.

23 THE COURT: In Queens?

24 PROSPECTIVE JUROR: I think so. He had once
25 a year. He also had cases here himself.

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1 THE COURT: Are they disposed of? Did you,
2 yourself, ever attended any of those sessions?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Anything that happened with your
5 brother left a feeling in you that makes you feel you
6 can't be fair to either the defense or the prosecution?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Is there anything about those
9 facts that your brother had contact with the criminal
10 justice system that makes you believe that this simply
11 is not the case for you?

12 PROSPECTIVE JUROR: No.

13 THE COURT: You all heard a little bit about
14 the nature of the crimes charged in this matter. We
15 all know it's uncomfortable. We all know it's not
16 something we know -- nobody ever wants to sit on a
17 trial for any charge. Is there anything about the
18 specifics of the charges in this case that makes any of
19 you believe you could not be fair and impartial? Raise
20 your hand if that's your situation, please.

21 No hands have been raised by anybody here.

22 Will you give members of law enforcement a
23 leg up, so to speak, and not be able to evaluate their
24 testimony the way you would evaluate any other person's
25 testimony? Raise your hand if you are going to seal

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1 off law enforcement, come in here and say if it's a
2 cop, he must be telling the truth. That's it. Raise
3 your hand if you feel that way. No hands have been
4 raised.

5 You heard me speak with Ms. Brown about the
6 location. Is there anyone else here, other than
7 Ms. Brown and Ms. Coleman that have any issues with the
8 location? No hands have been raised.

9 Are there any religious beliefs that would
10 prevent you from sitting?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Did anyone ever serve on a
13 criminal, or civil jury, or grand jury? Raise your
14 hand for prior jury service.

15 Mr. Christie, was it civil or criminal?

16 PROSPECTIVE JUROR: Criminal.

17 THE COURT: Here in Nassau?

18 PROSPECTIVE JUROR: It was.

19 THE COURT: How long ago?

20 PROSPECTIVE JUROR: I'd say about six years.

21 THE COURT: Without telling me the verdict,
22 did you reach a verdict?

23 PROSPECTIVE JUROR: We did.

24 THE COURT: Ms. DiNapoli?

25 PROSPECTIVE JUROR: Criminal.

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1 THE COURT: Here in Nassau?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: How long ago?

4 PROSPECTIVE JUROR: Last time I served, I
5 think six years.

6 THE COURT: Without telling me the verdict,
7 did you reach a verdict?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Ms. Aslav, it wasn't a jury?
10 No problem.

11 Does anyone here have family, friends or
12 yourselves, involved in law enforcement? This includes
13 NYPD, any sort of police officer, it includes the
14 sheriff's department, FBI, attorneys, criminal
15 attorneys, civil attorneys.

16 Yes, Mr. Christie.

17 PROSPECTIVE JUROR: Excuse me, how about out
18 of the country?

19 THE COURT: Anywhere.

20 Yes, sir.

21 PROSPECTIVE JUROR: A couple of friends.

22 THE COURT: Is there anything about that
23 relationship that makes you believe you cannot sit here
24 as a fair and impartial juror?

25 PROSPECTIVE JUROR: Absolutely not.

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1 THE COURT: You realize you can't call them
2 up and ask for their advice or tell them what is going
3 on?

4 PROSPECTIVE JUROR: I don't talk to them on a
5 daily basis anyway.

6 THE COURT: Fair enough.
7 Ms. Rodriguez.

8 PROSPECTIVE JUROR: Sibling, my sister.

9 THE COURT: Law enforcement?

10 PROSPECTIVE JUROR: Lawyer.

11 THE COURT: Criminal or civil?

12 PROSPECTIVE JUROR: Civil.

13 THE COURT: Can you give me assurance that
14 you will not call your sister and say, hey, can you
15 explain this to me because I just don't get it? You
16 realize you can't do that?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: You will not do that during this?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Ms. Brown, who do you have?

21 PROSPECTIVE JUROR: My sister is a police and
22 she is a lawyer. I have a niece who is a lawyer and a
23 police officer, and a nephew who is a police officer.

24 THE COURT: Is there anything about the fact
25 you have fellow members who are law enforcement, or

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1 attorneys make you believe you can't sit here and judge
2 other law enforcement officers?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Will you be able to judge their
5 credibility like anyone else?

6 PROSPECTIVE JUROR: Anyone else.

7 THE COURT: Mr. Coleman?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Ms. Fusco?

10 PROSPECTIVE JUROR: Two cousins in the NYPD,
11 and a couple of friends.

12 THE COURT: Same questions to you, anything
13 about that get in the way?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Mr. Pascucci, I know, yourself.

16 PROSPECTIVE JUROR: Myself, my son are Nassau
17 County police officers, and I'm also an attorney.

18 THE COURT: Is there anything in that
19 background and it's a significant background with law
20 enforcement, anything in that background that gets in
21 the way of being fair and impartial in this case?

22 PROSPECTIVE JUROR: I could be fair and
23 impartial in this case.

24 THE COURT: Thank you very much. I
25 appreciate that.

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1 Ms. DiNapoli?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Ms. Jergensen?

4 PROSPECTIVE JUROR: My dad was NYPD, and he
5 was a detective for the Queens DA.

6 THE COURT: Same questions for you, anything
7 about those relationships get in the way?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Mr. Aslav?

10 PROSPECTIVE JUROR: My uncle is a lawyer, his
11 two sons are lawyers, and I have a friend who is a cop
12 in Nassau County.

13 THE COURT: Anything about those
14 relationships get in the way of you being fair and
15 impartial if you are picked here?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Ms. Iorio?

18 PROSPECTIVE JUROR: Friends who are cops and
19 my aunt is a lawyer.

20 THE COURT: Is there anything about that that
21 will get in your way?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Let me go down the row to each of
24 you. Mr. Christie, what town do you live in?

25 PROSPECTIVE JUROR: Bethpage.

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1 THE COURT: How long have you been there?

2 PROSPECTIVE JUROR: About five years.

3 THE COURT: Where were you before that?

4 PROSPECTIVE JUROR: Garden City Park.

5 THE COURT: How long are you there?

6 PROSPECTIVE JUROR: Fifteen.

7 THE COURT: What is the highest level of
8 education you have completed?

9 PROSPECTIVE JUROR: Bachelor of fine arts.

10 THE COURT: Do you work?

11 PROSPECTIVE JUROR: I do.

12 THE COURT: What do you?

13 PROSPECTIVE JUROR: Senior systems engineer.

14 THE COURT: Tell me that in English.

15 PROSPECTIVE JUROR: Exactly. I'm the IT guy.

16 THE COURT: Are you married?

17 PROSPECTIVE JUROR: I am.

18 THE COURT: Does your spouse work?

19 PROSPECTIVE JUROR: She does.

20 THE COURT: What does she do?

21 PROSPECTIVE JUROR: Project manager.

22 THE COURT: Any children?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: How many?

25 PROSPECTIVE JUROR: One child, a

1 year-and-a-half.

2 THE COURT: Congratulations.

3 What do you like to do in your spare time
4 other than take care of the one-and-a-half year old.

5 PROSPECTIVE JUROR: I'm not taking care of
6 him. Sports; running, something of that nature.

7 THE COURT: You heard me talk to everyone
8 about social media. Are you on social media?

9 PROSPECTIVE JUROR: I'm on social media.

10 THE COURT: Did you put the coffee cup up
11 this morning with a sad face?

12 PROSPECTIVE JUROR: I don't think I posted
13 anything in six months.

14 THE COURT: Can you give me your assurance
15 you won't do that if you are picked?

16 PROSPECTIVE JUROR: I have no intention of
17 posting anything here.

18 THE COURT: Ms. Rodriguez, town?

19 PROSPECTIVE JUROR: Garden City Park.

20 THE COURT: How long?

21 PROSPECTIVE JUROR: It's been two-and-a-half
22 years.

23 THE COURT: Where were you before that?

24 PROSPECTIVE JUROR: Louisville, Kentucky.

25 I'm from here. I'm was from Garden City Park.

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1 THE COURT: Garden City was the only place
2 when you were here?

3 PROSPECTIVE JUROR: No, I also lived in
4 Hempstead.

5 THE COURT: What is the highest level of
6 school you completed?

7 PROSPECTIVE JUROR: Bachelor's.

8 THE COURT: Do you work?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: What do you do?

11 PROSPECTIVE JUROR: Nurse.

12 THE COURT: Married?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: What does your spouse do?

15 PROSPECTIVE JUROR: Works for Verizon.

16 THE COURT: Do you have any children?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: How many?

19 PROSPECTIVE JUROR: Three.

20 THE COURT: Grown or school age?

21 PROSPECTIVE JUROR: School age.

22 THE COURT: What do you like to do in your
23 spare time?

24 PROSPECTIVE JUROR: Sleep.

25 THE COURT: Are you an individual on social

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1 media?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Ms. Brown?

4 PROSPECTIVE JUROR: Valley Stream.

5 THE COURT: For how long?

6 PROSPECTIVE JUROR: Five years.

7 THE COURT: Before that?

8 PROSPECTIVE JUROR: Jersey.

9 THE COURT: Welcome to New York.

10 What is your highest level of school?

11 PROSPECTIVE JUROR: Twelfth grade.

12 THE COURT: Do you work?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: What do you do?

15 PROSPECTIVE JUROR: Certified nursing

16 assistant.

17 THE COURT: Are you married?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Do you have any children?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: How many?

22 PROSPECTIVE JUROR: Three.

23 THE COURT: Grown or school age?

24 PROSPECTIVE JUROR: Grown. Two children, a

25 boy, and a girl are teacher, and the one with the

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1 hotel. He works at a hotel in Jamaica.

2 THE COURT: How do you like to spend your
3 spare time?

4 PROSPECTIVE JUROR: Suduko. Play the puzzle.

5 THE COURT: Mr. Nieves?

6 PROSPECTIVE JUROR: Roosevelt for six years.

7 THE COURT: What is your highest level of
8 school?

9 PROSPECTIVE JUROR: Some college.

10 THE COURT: Do you work?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Are you currently unemployed?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: What did you do when you worked?

15 PROSPECTIVE JUROR: Home health aide.

16 THE COURT: Are you married?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Do you have any children?

19 PROSPECTIVE JUROR: No.

20 THE COURT: How do you like to spend your
21 spare time?

22 PROSPECTIVE JUROR: Artist, paint, draw,
23 sculp, blow glass.

24 THE COURT: Are you on social media?

25 PROSPECTIVE JUROR: No.

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1 THE COURT: Fair enough.

2 Ms. Fusco, what town do you live in?

3 PROSPECTIVE JUROR: East Rockaway.

4 THE COURT: For how long?

5 PROSPECTIVE JUROR: My whole life.

6 THE COURT: What is your highest level of
7 school?

8 PROSPECTIVE JUROR: Bachelor degree.

9 THE COURT: Do you work?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: What do you do?

12 PROSPECTIVE JUROR: Sales director for a
13 fashion company.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What does your spouse do?

17 PROSPECTIVE JUROR: Civil engineer.

18 THE COURT: Any children?

19 PROSPECTIVE JUROR: One, cooking.

20 THE COURT: No chance that will be ready
21 between now and the --

22 PROSPECTIVE JUROR: No, October.

23 THE COURT: How do you like to spend your
24 spare time?

25 PROSPECTIVE JUROR: Family.

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1 THE COURT: Social media?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Can you avoid talking about this
4 case?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Thank you.

7 Mr. Puscucci.

8 PROSPECTIVE JUROR: Hicksville.

9 THE COURT: How long?

10 PROSPECTIVE JUROR: Ten years.

11 THE COURT: What is your highest level of
12 school?

13 PROSPECTIVE JUROR: JD.

14 THE COURT: Do you work now?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Retired law enforcement?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Married?

19 PROSPECTIVE JUROR: Divorced.

20 THE COURT: What did your spouse do?

21 PROSPECTIVE JUROR: Teacher.

22 THE COURT: Any children?

23 PROSPECTIVE JUROR: Two.

24 THE COURT: Grown or school age?

25 PROSPECTIVE JUROR: Grown.

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1 THE COURT: What do they do?

2 PROSPECTIVE JUROR: My son is a Nassau County
3 police officer, and my daughter is a teacher.

4 THE COURT: What do you like to do in your
5 spare time?

6 PROSPECTIVE JUROR: Sports.

7 THE COURT: Can you avoid social media if you
8 are on it?

9 PROSPECTIVE JUROR: I have no social media.

10 THE COURT: Ms. DiNapoli?

11 PROSPECTIVE JUROR: East Meadow.

12 THE COURT: How long?

13 PROSPECTIVE JUROR: Eighteen years.

14 THE COURT: What is your highest level of
15 school?

16 PROSPECTIVE JUROR: Associate's degree.

17 THE COURT: In what?

18 PROSPECTIVE JUROR: Science.

19 THE COURT: Do you work?

20 PROSPECTIVE JUROR: Marketing manager.

21 THE COURT: Are you married?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Children?

24 PROSPECTIVE JUROR: No.

25 THE COURT: What do you like to do in your

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1 spare time?

2 PROSPECTIVE JUROR: Kayaking.

3 THE COURT: Social media?

4 PROSPECTIVE JUROR: I read only. I don't
5 know how to do anything.

6 THE COURT: Ms. Jergensen, what town?

7 PROSPECTIVE JUROR: Hicksville.

8 THE COURT: How long?

9 PROSPECTIVE JUROR: Twenty years.

10 THE COURT: What is your highest level of
11 school?

12 PROSPECTIVE JUROR: Bachelor's.

13 THE COURT: Do you work?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: What do you do?

16 PROSPECTIVE JUROR: Insurance broker.

17 THE COURT: Are you married?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: What does your spouse do?

20 PROSPECTIVE JUROR: He's a director at MSG
21 network.

22 THE COURT: Do you have any children?

23 PROSPECTIVE JUROR: Yes, two school age.

24 THE COURT: How do you like to spend your
25 spare time?

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1 PROSPECTIVE JUROR: Kids and baking.

2 THE COURT: Could you avoid social media?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Mr. Aslav, what town?

5 PROSPECTIVE JUROR: Oceanside.

6 THE COURT: For how long?

7 PROSPECTIVE JUROR: Ten years.

8 THE COURT: What is your highest level of
9 school?

10 PROSPECTIVE JUROR: High school.

11 THE COURT: Do you work?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: What do you do?

14 PROSPECTIVE JUROR: Sales rep for Nabisco.

15 THE COURT: Are you married?

16 PROSPECTIVE JUROR: Divorced.

17 THE COURT: What does your spouse do?

18 PROSPECTIVE JUROR: She was a doctor.

19 THE COURT: Any children?

20 PROSPECTIVE JUROR: I have a child who is in
21 college.

22 THE COURT: How do you like to spend your
23 spare time?

24 PROSPECTIVE JUROR: Sports.

25 THE COURT: Can you avoid social media for

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1 me?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Ms. Iorio, what town?

4 PROSPECTIVE JUROR: Hicksville.

5 THE COURT: How long?

6 PROSPECTIVE JUROR: Six years.

7 THE COURT: Before that?

8 PROSPECTIVE JUROR: Queens.

9 THE COURT: This is the first time you have
10 been out to Long Island to live?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What is your highest level of
13 school?

14 PROSPECTIVE JUROR: Twelfth grade, high
15 school.

16 THE COURT: Do you work?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: What do you do?

19 PROSPECTIVE JUROR: Insurance claims.

20 THE COURT: Are you married?

21 PROSPECTIVE JUROR: Separated.

22 THE COURT: What did your ex-spouse do?

23 PROSPECTIVE JUROR: Tow truck driver.

24 THE COURT: Do you have any children?

25 PROSPECTIVE JUROR: No.

1 THE COURT: How do you like to spend your
2 spare time?

3 PROSPECTIVE JUROR: Reading, watching TV.

4 THE COURT: Can you avoid social media?

5 Mr. Perri, we'll see if we can get this done
6 timely. I don't know if we can. You will start.

7 MR. PERRI: My name is Assistant District
8 Attorney Anthony Perri. I'm representing the People of
9 the State of New York, the government, in bringing this
10 case against the defendant. Your Honor, defense
11 counsel.

12 As you already heard, this is a case where
13 there are going to be a variety of witnesses. With the
14 last panel, about the fact it will be the People's
15 intention to call child witnesses in this matter.
16 Right off the bat, does anyone here have a problem with
17 the idea of sitting and listening to child witnesses?
18 Of course, it's not something that is comfortable, that
19 somebody wants to do.

20 Does anyone feel they would not be able to
21 sit in the case of alleged child abuse and listen
22 fairly and honestly to testimony from a child or
23 multiple children in the case? Is there anyone who
24 does not feel they could be fair and impartial?

25 Ms. Fusco, could you be fair and impartial?

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1 PROSPECTIVE JUROR: Yes.

2 MR. PERRI: Mr. Christie?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Mr. Pascucci?

5 PROSPECTIVE JUROR: Yes.

6 MR. PERRI: I also talked about with the last
7 panel the ability to listen to a child, listen to any
8 witness, the different factors that go into judging
9 credibility of a child, to asses anyone. You are
10 listening to testimony during this case. And, Mr.
11 Aslav, in judging the credibility, the believability of
12 a witness, would you listen for whether or not it is
13 consistent with other evidence in the case?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Would you listen and try to
16 determine whether or not that person has a reason she
17 would lie or have a reason to give false testimony?

18 PROSPECTIVE JUROR: No.

19 MR. PERRI: Would you like to figure out
20 whether the person has anything to gain in their case?

21 THE COURT: I need you to speak up so the
22 reporter can hear. Are you saying you don't understand
23 the question, or I don't know?

24 PROSPECTIVE JUROR: Repeat the question.

25 MR. PERRI: When you are listening to someone

1 who is testifying giving their narrative of what
2 happened to them, what they know, would you try to
3 figure out whether or not that witness has something to
4 gain by telling you their version?

5 MR. BERGER: I object. You already indicated
6 motive is not a factor that has to be proved. He seems
7 to be going to that at this point.

8 THE COURT: What the attorneys are telling
9 you is not evidence of anything. They're trying to
10 determine whether or not you could be fair and
11 impartial. You heard me talk about motive. I think
12 Mr. Perri is talking about evaluating credibility. You
13 could continue questions of evaluating credibility.

14 MR. PERRI: As far as you are trying to
15 figure out whether or not they are telling the truth,
16 what do you look for?

17 PROSPECTIVE JUROR: I guess, listen to the
18 facts and --

19 MR. PERRI: Do you look at the demeanor and
20 how they tell you?

21 PROSPECTIVE JUROR: Right.

22 MR. PERRI: Do you look at whether or not
23 they are consistent?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: And Ms. DiNapoli, do you believe

1 everyone who recalls everything? I'm sorry, when
2 someone is telling you what they remember, each time
3 they tell you that story, do they tell you the same
4 story each and every time?

5 PROSPECTIVE JUROR: Most likely not.

6 MR. PERRI: Does that mean they're lying?

7 THE COURT: I don't think so.

8 MR. PERRI: Does that mean the essential
9 facts of what they are saying happened is untrue?

10 PROSPECTIVE JUROR: No.

11 MR. PERRI: Do you agree with that,
12 Ms. Jergensen?

13 PROSPECTIVE JUROR: I think people have
14 different interpretations sometimes.

15 MR. PERRI: How would you try to figure out,
16 listen to multiple information? What would you look
17 for in trying to decide what really happened?

18 PROSPECTIVE JUROR: Listen for consistencies
19 in the story. I like to look at the body language.

20 MR. PERRI: Ms. Rodriguez, when you are
21 evaluating someone's credibility, is there any one
22 aspect how someone reacts to something you may think is
23 traumatic? Would you assume they react the same way
24 you would react to something?

25 PROSPECTIVE JUROR: No.

1 MR. PERRI: No. Do you think every
2 individual reacts in the same way to something?

3 Could we please approach?

4 THE COURT: You can.

5 (Whereupon, there was a sidebar discussion as
6 follows:)

7 MR. PERRI: I don't know if it's
8 unintentional, I'm asking if defense counsel could
9 please -- there's a variety of noise, sounds,
10 exasperations that comes out with every question I'm
11 asking.

12 MR. BERGER: That's nonsense. I don't know
13 what he is imagining here.

14 MR. PERRI: If it's not true, I apologize.

15 MR. BERGER: I accept your apology. That
16 didn't happen.

17 THE COURT: Both of you stop. There is a lot
18 of noises within the courtroom. I don't know where
19 they are coming from. Some of it is the air condition,
20 some of it is the interpreter. To do our job I ask we
21 all behave professionally. I don't know who did what.
22 I don't care. Everyone behave professionally.

23 Try to get the round done. Each of you is
24 getting ten minutes. I have to be done by 4:45. If I
25 don't have to drag these people back for a second day,

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1 I don't want to. Let's discuss it now if you can't get
2 it done. I'll do it in the morning.

3 MR. BERGER: I'll ask you to do that.

4 (Whereupon, the proceedings resumed.)

5 THE COURT: Ladies and gentlemen, I wanted to
6 get you through this process today. It doesn't look
7 like that is a possibility. Good news and bad news, I
8 guess. The bad news is you are coming back tomorrow
9 morning for me. The good news is if you are not picked
10 as a juror tomorrow, you are done. So, there's always
11 a silver lining to everything that happens.

12 I ask you to please remember your seats.
13 Please be here tomorrow wherever the officer tells you
14 to go for 9:30. I can't start until you are here. The
15 closer to 9:30 we start, the faster we get done. You
16 then get credit for a full day of jury service, and
17 it's supposed to be somewhat nice out tomorrow. So,
18 you have most of the day to yourself once we finish the
19 process.

20 You must keep an open mind throughout this
21 procedure. Do not discuss this case amongst yourselves
22 or with anyone else during overnight. Do not permit
23 anyone to discuss the case in your presence. Do not
24 talk to the lawyers, witnesses, or the defendant about
25 anything during the trial.

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1 And do not visit or view the place where the
2 charged crime was allegedly committed, or any other
3 place involved in the case. Should the two individuals
4 find themselves in Roosevelt, just keep driving if you
5 find yourself on that street for some reason.

6 If there is any news coverage of the case, do
7 not read, listen, or view, report it by the news media,
8 and do not attempt to research any fact, issue, or law
9 related to this case whether by discussion with others,
10 by research in the library, Internet, or any other
11 means or source.

12 Enjoy the evening. See you all at 9:30
13 tomorrow morning. Thank you.

14 (Whereupon, the jury panel exited the
15 courtroom.)

16 THE COURT: Anything for the record before we
17 break?

18 MR. PERRI: No, your Honor.

19 MR. BERGER: The interpreter is sitting next
20 to you. I was just sitting there listening to the
21 questions.

22 THE COURT: No problem. I'll see everyone
23 tomorrow morning. I'll see you at 9:30.

24 (Whereupon, the trial was adjourned to May 6,
25 2015.)

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :
:

6 DANIEL RAMOS, :
:

7 Defendant. : Jury Trial

8 -----X

8 May 6, 2015
262 Old Country Road
9 Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

16 * * * * *

17

18 THE CLERK: Case on trial continued,
19 Indictment 742N of 2014, People of the State of New
20 York vs. Daniel Ramos.

21 Let the record reflect all parties are
22 present. The jury is not present at this time.

23 Are the People ready to proceed?

24 MR. PERRI: Yes, your Honor.

25 THE COURT: Defense counsel ready?

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1 MR. BERGER: Yes, your Honor.

2 THE COURT: Before I call the jurors back in,
3 is there anything for the record, People?

4 MR. PERRI: No, your Honor.

5 MR. BERGER: No.

6 THE INTERPRETER: Yes, your Honor. The
7 interpreter would like to place on the record the
8 interpreter is to remain neutral at all stages at the
9 proceeding, at no point does she become a witness to
10 anything that is happening in the courtroom.

11 THE COURT: Fair enough. That is my
12 understanding of your job also. Everyone will respect
13 the interpreter's job and position as we proceed.
14 Thank you for letting us know.

15 THE INTERPRETER: Thank you, your Honor.

16 THE COURT: It's my understanding we may be
17 missing a juror from yesterday, at the moment, sitting
18 in seat number six, Ms. Coleman has not reported in. I
19 need to know from both of you whether you want to
20 proceed at this point. I told her 9:30. It's two
21 minutes to ten. Do we want to proceed with the other
22 nine individuals, or do you want me to give her a few
23 more minutes to get here?

24 MR. PERRI: People are you ready to proceed.

25 MR. BERGER: Let's proceed. If she comes in

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1 in the next few minutes, perhaps, it will still be
2 appropriate to seat her.

3 THE COURT: Absolutely, and I'll discuss that
4 with both of you, and it will be decided by what you
5 think would be fair with regards to that.

6 Let the record reflect that I have just been
7 advised that all of our jurors are here and being
8 brought into the courtroom.

9 (Whereupon, the jury panel entered the
10 courtroom.)

11 THE CLERK: Do both sides stipulate that the
12 jurors are seated properly who were here yesterday?

13 MR. PERRI: Yes, your Honor.

14 MR. BERGER: Yes, your Honor.

15 THE COURT: Welcome back everyone and good
16 morning. The weather is not great at the moment, but
17 it will get better. It's still a plus you are here
18 today. We're going to get right into the questioning.

19 MR. PERRI: Thank you, your Honor.

20 Good morning, ladies and gentlemen. Thank
21 you again for coming back for the second day of jury
22 selection, and I want to first go over a couple of
23 specific questions with individual jurors about some
24 information we have offered.

25 Now, this is with Ms. Rodriguez, you

1 currently are working as a nurse?

2 PROSPECTIVE JUROR: Yes.

3 MR. PERRI: Where do you work?

4 PROSPECTIVE JUROR: New York Hospital,
5 Queens.

6 MR. PERRI: What department?

7 PROSPECTIVE JUROR: Nursing department. It's
8 the ortho surgical floor.

9 MR. PERRI: How long have you worked in New
10 York Hospital, Queens?

11 PROSPECTIVE JUROR: Technically, eleven
12 years.

13 MR. PERRI: Ms. Coleman, did you -- I'm sorry
14 if I missed you. Did you have any children?

15 PROSPECTIVE JUROR: No.

16 MR. PERRI: You say you also are an artist
17 and painted?

18 PROSPECTIVE JUROR: Yes.

19 MR. PERRI: You stated you have some college
20 in your background. What did you study?

21 PROSPECTIVE JUROR: Paralegal.

22 MR. PERRI: Do you want to go back into home
23 healthcare work?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: Ms. Fusco, you stated that you

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1 had a cousin who was convicted of a crime a long time
2 ago. Have you had any other dealings with police
3 officers for good or bad in recent history?

4 PROSPECTIVE JUROR: No.

5 MR. PERRI: Ms. Iorio, you said your brother
6 had several open matters in Queens and has had open
7 matters in the past in Nassau?

8 PROSPECTIVE JUROR: Yes.

9 MR. PERRI: What are your thoughts about how
10 you feel about police officers in light of your
11 brother's experience?

12 PROSPECTIVE JUROR: I don't. I don't have --
13 I mean, bias on them. It's his own doing. I don't
14 have good or bad experiences with police officers.

15 MR. PERRI: Ms. Aslav, you have at least one
16 friend who is in the Nassau County Police Department?

17 PROSPECTIVE JUROR: Yes.

18 MR. PERRI: Currently in the Nassau County
19 Police Department?

20 PROSPECTIVE JUROR: Yes.

21 MR. PERRI: Where does he work? Detective or
22 officer?

23 PROSPECTIVE JUROR: He's an officer.

24 MR. PERRI: Do you know what precinct?

25 Do you often talk with him about his work?

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1 PROSPECTIVE JUROR: No.

2 MR. PERRI: Do you have an impression based
3 on your relationship with law enforcement in general?

4 PROSPECTIVE JUROR: No.

5 MR. PERRI: Ms. Jergensen, you stated that
6 unfortunately your brother was convicted of drunk
7 driving, a manslaughter charge, ten years ago?

8 PROSPECTIVE JUROR: Yes.

9 MR. PERRI: Do you feel you are able to put
10 aside any and all feelings or whatever happened in that
11 case when you are judging both a police officer and a
12 detective to testify?

13 PROSPECTIVE JUROR: Yes.

14 MR. PERRI: Is there anything about how that
15 case was handled that you would hold against the
16 district attorneys and the prosecutor in this matter?

17 PROSPECTIVE JUROR: Not at all.

18 MR. PERRI: Ms. DiNapoli, you served on a
19 criminal jury?

20 PROSPECTIVE JUROR: Yes.

21 MR. PERRI: Six years ago?

22 PROSPECTIVE JUROR: Yes.

23 MR. PERRI: Did you find being on the jury
24 process, after deliberating, after the trial, easy or
25 difficult for you?

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1 PROSPECTIVE JUROR: It was a little difficult
2 because of the case. We did the whole thing.

3 MR. PERRI: Aside from the facts of the case,
4 we don't want you to go into the process, what did you
5 find difficult about the process of deliberating?

6 PROSPECTIVE JUROR: You have all these people
7 with all different opinions. It took a long time for
8 us to reach a decision. I don't think some of the
9 people, who at the end, agreed with us, did it
10 willingly. I think they felt they had to.

11 MR. PERRI: What did -- it seems from what
12 you are saying, you were in the majority?

13 PROSPECTIVE JUROR: Yes.

14 MR. PERRI: What did you do to convince other
15 people about the correctness of your individual
16 opinion?

17 PROSPECTIVE JUROR: I don't remember. It was
18 very stressful.

19 MR. PERRI: Is there anything about that
20 experience serving as a juror in that case that makes
21 you not serve as a juror in this case?

22 PROSPECTIVE JUROR: The foreperson. I had to
23 announce the verdict. That didn't go very well. The
24 courtroom was crazy. We had to be driven to the cars.
25 It wasn't pleasant. I don't think --

1 MR. PERRI: You say I don't know. The
2 important thing, yes or no, you are able to separate
3 yourself from past experience, you will not be in fear?
4 That's a different case. Are you going to be able to
5 do that or not be able to do that? Only you would know
6 the answer.

7 PROSPECTIVE JUROR: Yes.

8 MR. PERRI: That's fine.

9 Mr. Pascuci, you work as a lawyer?

10 PROSPECTIVE JUROR: Yes.

11 MR. PERRI: What kind of law?

12 PROSPECTIVE JUROR: Real estate.

13 MR. PERRI: You have expertise in law and law
14 enforcement. Are you going to be able to separate
15 yourself and follow the direction of the judge and
16 evaluate the evidence in this case?

17 PROSPECTIVE JUROR: I'll be able to follow
18 the instructions and separate myself. I want to be
19 honest to you and Mr. Berger, I have a lot of
20 experience in -- I was a detective, and I was also a
21 lieutenant in charge of the detective squad. I have a
22 lot of experience in interrogation and confessions, and
23 I also did work briefly in a sexual exploitation of
24 children squad with the FBI, which we investigated
25 pedophile crimes and stuff like that. I think that I

1 could definitely be fair and not make any judgments.
2 Just based on this case, I want you both to know I have
3 a lot of experience in what you are looking at in this
4 trial.

5 MR. PERRI: Thank you for putting that forth.
6 When you say you think you could be fair and impartial,
7 are you saying even though you have this experience and
8 it's part of who you are and part of your background,
9 you would be able to judge this case on the evidence
10 and according to the law as the judge puts it to you?

11 PROSPECTIVE JUROR: Yes.

12 MR. PERRI: Now, one of the topics that has
13 been discussed with the jury in the last panel, a
14 little bit at the start of yesterday afternoon, was the
15 question of credibility and the question of
16 truthfulness and in examining the credibility of any
17 witness, whether it is a child or an adult, or police
18 officer.

19 Mr. Aslav, would you agree everyone is
20 capable of lying?

21 PROSPECTIVE JUROR: Yes, people are capable
22 of lying.

23 MR. PERRI: Whether it is a police officer or
24 a scientist, or a civilian?

25 PROSPECTIVE JUROR: Yes.

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1 MR. PERRI: Does anyone disagree with that?
2 Even if they are a child, would you agree it is
3 possible and capable the child is capable of telling
4 the truth as well, Mr. Christie?

5 PROSPECTIVE JUROR: Absolutely.

6 MR. PERRI: Just because the individual is a
7 child, the witness, and the child is testifying before
8 you, that in and of itself is not a reason to discredit
9 their testimony. Does anyone disagree? Does anyone
10 think they can't trust anything coming from a child
11 witness?

12 Additionally, talking about judging the
13 credibility, they would want to look at the whole
14 picture.

15 Ms. Coleman, I would like to ask you, when
16 you are examining the evidence and deciding whether or
17 not the People reached their verdict, if you heard one
18 witness you didn't like, would you turn off and decide
19 you are not going to believe or listen to anything else
20 presented to you?

21 PROSPECTIVE JUROR: No.

22 MR. PERRI: Is there anyone else here, one
23 witness they don't like, one witness they don't agree,
24 one witness they don't find -- they will ignore the
25 rest of the evidence in the case? That wouldn't -- I

1 mean, that wouldn't be fair. That's what the case is
2 about and what the People hope to present before you is
3 collective evidence that all works and presented to you
4 as a whole picture.

5 And Ms. Brown, do you feel that you would
6 have a problem looking at all of the evidence together,
7 looking at each person's credibility, but then looking
8 at the evidence as a whole and seeing whether or not
9 what is needed in deciding what we have to prove beyond
10 a reasonable doubt?

11 PROSPECTIVE JUROR: No.

12 MR. PERRI: What the People hope to do, we
13 hope to put forth before you the case that proves this
14 case beyond a reasonable doubt, the defendant's guilt.

15 Presently, is anyone here uncomfortable with
16 having, as the Judge instructed to you, to put aside
17 any of the consequences of your decision? It's a
18 natural human emotion, and as Mr. Berger said, we're
19 looking to have people who can separate their emotions
20 to some degree and look at the rationale and decide,
21 decide the facts of this case without any regard to
22 punishment that might be involved afterwards.

23 Ms. DiNapoli, could you separate yourself
24 from punishment?

25 PROSPECTIVE JUROR: Yes.

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1 MR. PERRI: Ms. Jergensen, you could decide
2 the case without sympathy or concern?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Ms. Moezinia, that's the role of
5 the Judge and nothing to do with you if the People met
6 their burden.

7 PROSPECTIVE JUROR: Yes.

8 MR. PERRI: In discussing the evidence in the
9 case, how many people watch crime shows? There's very
10 little sequence of -- a criminal attorney on the
11 defense has enjoyed those shows. We are frustrated by
12 those shows. Maybe more on our side it does present a
13 very neat clean picture where at the end everything
14 comes together, it's all one hundred percent clear and
15 very satisfying within the half hour, within an hour
16 show.

17 Ms. Fusco, do you understand this isn't
18 television?

19 PROSPECTIVE JUROR: Yes.

20 MR. PERRI: What is portrayed on television
21 about the law, police, about evidence, about how a
22 trial is put forth to a jury, that's different.

23 PROSPECTIVE JUROR: I don't watch crime
24 shows. I'm a reality girl.

25 MR. PERRI: Is there anyone that thinks

1 because she watched a crime show scene, CSI with
2 hundreds of millions of dollars, scientific evidence in
3 every case, they will not be able to separate that from
4 their common sense and from reality how a criminal case
5 is put forth?

6 Mr. Aslav, would you be able to judge this
7 case without expecting the same quality as a Hollywood
8 movie?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: And in judging a person's
11 credibility, in judging whether or not they are to be
12 believed, Mr. Aslav, do you always know for one hundred
13 percent sure why you believe them or don't believe
14 them?

15 PROSPECTIVE JUROR: Just the way they act.

16 MR. PERRI: When you say how they act, you
17 mean how they appear to you?

18 PROSPECTIVE JUROR: Yes.

19 MR. PERRI: Whether they are consistent or
20 not?

21 PROSPECTIVE JUROR: Yes.

22 MR. PERRI: Just saying how someone acts is
23 how they are telling the truth. It's a multifaceted
24 analysis and you may not know exactly why you believe
25 or disbelieve someone. You understand it's a

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1 complicated process. Do you believe that to be so,
2 Ms. Brown, in deciding whether or not someone is
3 telling the truth?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: Ms. Brown, has it been your
6 experience that you had people -- is it common in your
7 experience people have lied to you for absolutely no
8 reason, just for the fun of lying to you?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: When has that happened?

11 PROSPECTIVE JUROR: Mostly all April Fools
12 Day.

13 MR. PERRI: Outside of April Fools Day, when
14 it is a joke, trying to fool you, does it happen
15 without any reason?

16 PROSPECTIVE JUROR: People lie. It's likely
17 because of a reason. I don't remember anybody who lied
18 to me without reason.

19 MR. PERRI: Outside of April Fools Day or
20 something lighthearted or a white lie, people are
21 random for no apparent reason in lying.

22 What exactly -- do you have something to say,
23 Ms. Jergensen?

24 PROSPECTIVE JUROR: Unfortunately, my brother
25 is the perfect liar. He lies about everything. It

1 could be sunny, and he tells you it's raining for no
2 reason.

3 MR. PERRI: That kind of experience with your
4 brother, it's not one thing.

5 PROSPECTIVE JUROR: It's constantly.

6 MR. PERRI: Even though the other facts are
7 right there in front of you, the objective facts,
8 outside of any profession, you know he is lying, you
9 look outside and see it's sunny.

10 PROSPECTIVE JUROR: Right.

11 MR. PERRI: Readily, parents in that case,
12 it's unfortunate that your brother is lying to you.
13 I'm sorry that's happening to you.

14 PROSPECTIVE JUROR: I was going to say too,
15 when I first came in here, knowing what the case was
16 about, I automatically -- I have kids. We know how to
17 close this out, if somebody was charged with it,
18 they're absolutely going away, or whatever. The
19 mother, I think about it. The mother, we absolutely
20 need to see where we're going with it because it would
21 hurt me to send somebody who is innocent to jail as
22 opposed to him doing something.

23 MR. PERRI: That is absolutely true, in both
24 respects, that getting the verdict or deciding the
25 verdict, that both sides obviously want it to be

1 accurate and will attempt to present to you, and it
2 will present you a case that doesn't meet their burden.
3 Even though you have concerns, as everybody should
4 have, being innocent, being wrongfully convicted, as
5 the Judge is concerned and both sides are concerned.
6 If the People present, beyond a reasonable doubt,
7 testimony, physical evidence, et cetera, all of that
8 comes to meet the Judge's definition to meet beyond a
9 reasonable doubt, would you feel comfortable in finding
10 the defendant guilty?

11 PROSPECTIVE JUROR: Absolutely. My brother
12 has served time for stuff he has done. Unfortunately,
13 you have to remove the emotions away and look at the
14 facts, like you said.

15 MR. PERRI: Do you feel comfortable if the
16 people reach their burden to return a verdict of
17 guilty?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: You have about two minutes.

20 MR. PERRI: Ms. Coleman, if the People reach
21 their burden, would you be able to return a verdict of
22 guilty?

23 PROSPECTIVE JUROR: Yes.

24 MR. PERRI: Talking about common sense and
25 what reasonable doubt might be, that when we're asking

1 you to go and deliberate, we're asking you to use your
2 common sense, to use your reason, it doesn't mean the
3 People are going to reach above and beyond any level of
4 doubt. One of the classic examples, you could go to
5 bed, look outside the window and the lawn is dry and
6 the yard is dry. You go to bed, wake up the next
7 morning, look out the window, plants are watered. The
8 entire neighborhood, the streets are wet. What would
9 you say is your belief about what happened while you
10 were asleep?

11 PROSPECTIVE JUROR: It rained.

12 MR. PERRI: Is it possible that the fire
13 department drove through the neighborhood and dowsed
14 everyone's lawn?

15 PROSPECTIVE JUROR: It's possible.

16 MR. PERRI: Would you say that's reasonable
17 to believe that, instead of that it just rained?

18 PROSPECTIVE JUROR: No.

19 MR. PERRI: And we're asking you to use your
20 life experiences in determining whether or not there is
21 a reasonable doubt, whether there is a reason you can
22 actually explain that hasn't been answered by the
23 evidence put before you, and if you are selected to be
24 a member of this jury, we hope you bring that common
25 sense and bring that entire person into that account.

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1 THE COURT: Mr. Berger.

2 MR. BERGER: Let me start with Mr. Christie.
3 You heard me make the point yesterday about there is
4 the emotional side and the intellectual side?

5 PROSPECTIVE JUROR: Right.

6 MR. BERGER: I can't ask you to check your
7 emotions at the door. I can ask you to be aware of the
8 fact you might have some emotional factors that creep
9 in during the course of the trial. You have to be able
10 to say to yourself, I have to watch that. I have to
11 think to that intellectual level. I have to analyze
12 the witness and evidence; can I do that?

13 PROSPECTIVE JUROR: I can.

14 MR. BERGER: You heard not only when the
15 Judge was questioning and Mr. Perri was questioning,
16 but as late as the time when I was questioning, people
17 all of sudden are raising their hands.

18 PROSPECTIVE JUROR: I remember that.

19 MR. BERGER: Do you think you shouldn't sit
20 because of the emotional factor? There will be
21 intermittent discussions about sex that will happen
22 here, that offends some people for whatever reason. It
23 is morale, personal reasons, whatever. Then there will
24 be the allegation that something happened of a sexual
25 nature to a six-year old girl and that could raise

1 emotional factors as well.

2 The defendant is Hispanic. Would you agree
3 that people are prejudice in this day and age? Do you
4 think people are prejudice against Hispanic people?
5 All my questions are going to the rest of you even
6 though I'm directing them to Mr. Christie. If you
7 disagree, you don't think in this day and age there are
8 prejudices against Hispanic people? You considered it
9 all, you saw what happened, and you are fine as being a
10 juror here?

11 PROSPECTIVE JUROR: Separating emotions and
12 intellect is not a problem for me. As far as Hispanics
13 go, my wife is Columbian.

14 PROSPECTIVE JUROR: I'm Puerto Rican.
15 Prejudice or not, it really depends upon the person.

16 MR. BERGER: As I made the point yesterday, I
17 asked individual jurors to make individual judgments on
18 their -- about an individual case.

19 At this point, you don't feel, one, you are
20 prejudiced, or two, you have any emotional factor that
21 will interfere with the judgments to decide this case?

22 Yesterday, Ms. Rodriguez, I said I don't have
23 the burden to prove anything. Do you understand that?
24 I don't have to prove anything.

25 PROSPECTIVE JUROR: I don't remember that.

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1 MR. BERGER: Suppose the prosecution presents
2 eight witnesses here and I don't present any, do you
3 have to vote guilty?

4 PROSPECTIVE JUROR: Say that again.

5 MR. BERGER: If the prosecutor presents eight
6 witnesses and I don't present one, would you have to
7 vote guilty?

8 PROSPECTIVE JUROR: I would have to? No.

9 MR. BERGER: Why not?

10 PROSPECTIVE JUROR: Just because you didn't
11 have a witness and the other one had a witness.

12 MR. BERGER: They're presenting all kinds of
13 proof here, and the prosecutor is going to believe all
14 of that proof, or that testimony, or whatever it is,
15 and I'm asking, would you have to vote guilty if the
16 prosecutor was the only one who presented witnesses
17 here?

18 PROSPECTIVE JUROR: No.

19 MR. BERGER: Why not?

20 PROSPECTIVE JUROR: Just because of the
21 evidence that was presented doesn't mean it was
22 factual.

23 MR. BERGER: The point is, that the burden is
24 only on the prosecutor to present evidence to you
25 beyond a reasonable doubt that is so convincing to you,

1 as the definition will be given to you by the Judge who
2 did it yesterday a little bit, but she explained to you
3 what the burden is, and if that burden is not met, then
4 you vote not guilty. Has anybody ever accused you of
5 something you didn't do in your lifetime?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Sometimes you respond, sometimes
8 you don't. That will be a decision I'll make here in
9 this case.

10 Ms. Coleman, you understand I have no
11 obligation to prove anything here?

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: Does anybody have trouble with
14 that? Many, many, jurors raise their hand and say, you
15 know, if you are not going to do anything here, you are
16 not going to present anything here. Does anybody feel
17 that way here? I can assure you I won't remain silent
18 during the course of this trial. I like practicing law
19 too much.

20 You will be asked, Ms. Fusco, too, this is to
21 everybody, all my questions are to everybody to
22 evaluate the credibility of a witness. That's what you
23 do as jurors. Do you think anybody has sworn to tell
24 the truth and lied, deliberately lied?

25 PROSPECTIVE JUROR: Yes.

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1 THE COURT: I need you to --

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Do you think civilians --

4 PROSPECTIVE JUROR: Yes.

5 MR. BERGER: Police officers?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Do you understand police
8 officers don't get no extra edge?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: Mr. Pascucci, you are a
11 lieutenant or you were a lieutenant?

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: Do you think police officers
14 have lied on the witness stand?

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: Many have intentionally gotten
17 on the witness stand to deceive.

18 PROSPECTIVE JUROR: I don't know about what
19 is intentionally.

20 MR. BERGER: That's what lying is. Lying is
21 an intent to deceive. If you make a mistake, that's
22 one thing. Do you think police officers are sworn to
23 tell the truth and intentionally -- intended to lie?

24 PROSPECTIVE JUROR: I would say as a human
25 being with flaws, just that as a lawyer could lie, a

1 politician could lie, and a judge could lie, I would
2 say, yes, a police officer could lie.

3 MR. BERGER: Not whether they could. That's
4 the question that Mr. Perri asked you. I'm asking you,
5 have they actually, in your opinion, lied on the
6 witness stand?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: Does anybody disagree with that,
9 anybody? You heard the gentleman yesterday sitting in
10 the back talk about the -- puts them above everybody
11 else, gives them an edge. That person isn't suitable
12 to be sitting. We don't give police officers any
13 special edge. Does everyone understand that?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: My question to all of you
16 collectively, not whether it's possible, not whether
17 it's in the realm of theory, has it actually happened
18 in your life experience, have you actually had life
19 experience where you believe -- I understand you are
20 not in the head of anybody on the witness stand, you
21 actually believe police officers have lied on the
22 witness stand. Does anybody disagree with that?

23 PROSPECTIVE JUROR: You had said in our life
24 experience. I couldn't say in my life experience. I
25 never experienced a policeman lying.

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1 MR. BERGER: You read newspapers, read
2 stories. Based upon your life experience, are you --

3 PROSPECTIVE JUROR: All right, then forget
4 it.

5 MR. BERGER: I can only ask you your opinion.
6 That you see if you did not believe that police
7 officers lie, and I need to show you at the end of the
8 case that they did, I could never convince you, I could
9 never have the opportunity to show you that they didn't
10 tell the truth here. So I need you to be able to say
11 to me, yes, I believe it happened, so --

12 PROSPECTIVE JUROR: Now I have to say it,
13 even I questioned you. Yes, I believe it happened. I
14 don't know how convincing that is. How do I question
15 you and then I turn around and give you the answer you
16 want.

17 MR. BERGER: I don't want an answer. There
18 are no wrong answers here. If you told me you were
19 prejudiced against Hispanic people, that's an honest
20 answer. It may be something you would all be proud of,
21 but it's an honest answer. The honest answer is, I
22 don't think police officers intentionally have gotten
23 on the witness stand, sworn to tell the truth and lied.
24 That's an honest answer, if you believe your opinion.
25 You never had this happened; is that your opinion?

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1 PROSPECTIVE JUROR: I'm so confused.

2 MR. BERGER: Do you believe a police officer
3 has sworn to tell the truth and not been truthful on
4 the witness stand?

5 PROSPECTIVE JUROR: I'm sure it must have
6 happened.

7 MR. BERGER: Ms. Iorio, do you think police
8 officers have sworn to tell the truth and not told the
9 truth?

10 PROSPECTIVE JUROR: I'm sure it happened. I
11 never experienced it.

12 MR. BERGER: If, at the end of the case that,
13 in fact, it happened, then I need you to have an open
14 mind about that.

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: Does anybody not have an open
17 mind about that?

18 What I'll be asking you to do, Ms. Jergensen,
19 start at point zero, be just ready. Don't give an edge
20 simply because they are getting on the witness stand
21 and swearing to tell the truth. I don't know how many
22 witnesses will be truthful or not truthful. Remember,
23 I made a point yesterday. We don't decide things based
24 upon percentage. Don't assume because somebody is
25 getting on the witness stand, they are telling the

1 truth. Be just as ready to believe or disbelieve.
2 That will go for my witnesses, as well as Mr. Perri's
3 witnesses.

4 Does everybody assure me they can do that?
5 There are people who think they can swear to tell the
6 truth, they have the obligation to. All of those risks
7 involved, it doesn't mean it doesn't happen. I can't
8 tell you what the percentage will be. It may be
9 everybody will tell the truth. It may be very few
10 will. Keep an open mind about that.

11 Do you think a police officer can falsely
12 obtain a confession from an individual, Mr. Pascucci?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERGER: Maybe tricked them or coerced
15 them in some way or another that they put a signature
16 on a piece of paper that wasn't true?

17 PROSPECTIVE JUROR: Yes.

18 MR. BERGER: Does anybody disagree with those
19 answers?

20 Mr. Perri was talking about motives to lie.
21 I told you yesterday, do you remember I asked you to
22 consider -- it's not your obligation to figure out why
23 somebody lied, only if they did, because as you, Ms.
24 Jergensen, your prior lies, you don't even know why.
25 You heard the gentleman yesterday in the panel before

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1 you said if I can't figure out why he is lying, then he
2 must be telling the truth. You are not to be expected
3 to be psychologists. You are only expected to think if
4 that person lied or if that person told the truth or
5 not, not why they may not have told the truth. Does
6 everybody understand?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: You heard the gentleman who said
9 yesterday, where there is smoke, there is fire. In
10 fact, somebody said he wouldn't be sitting here if they
11 weren't guilty. I know you all must of thought that.
12 When you heard the charges are sexual abuse of a
13 six-year old girl, putting his mouth on her vagina,
14 that must have just horrified you all and all of a
15 sudden you are ready to convict this man and send him
16 away. What I'm saying to you is, you have to disabuse
17 of that belief, because innocent are accused of crimes;
18 would you agree with that, Ms. Aslav?

19 PROSPECTIVE JUROR: Yes.

20 MR. BERGER: That's why we have jury trials.

21 Ms. Aslav, this is a very serious case by the
22 nature of the charges. You have told me from your
23 non-answers, so to speak, because you have agreed with
24 people, that you're just as prepared to vote not guilty
25 as guilty in this case?

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1 PROSPECTIVE JUROR: Yes.

2 MR. BERGER: Are you just as prepared to vote
3 not guilty in a case as serious as this as if you would
4 if this was simply a trespass case, if somebody walked
5 on somebody's property? Does the seriousness of the
6 charges make you want to err on the side of conviction
7 in this case?

8 PROSPECTIVE JUROR: I have to hear the
9 evidence.

10 MR. BERGER: The seriousness of the charge,
11 do you have to err on the side of conviction because it
12 is such a serious charge?

13 PROSPECTIVE JUROR: No.

14 MR. BERGER: You are ready to vote not
15 guilty, as it is simply a trespass case. Does
16 everybody agree with that answer; Ms. Brown?

17 PROSPECTIVE JUROR: Yes.

18 MR. BERGER: Ms. Coleman, would you be upset
19 with me if I vigorously question a seven-year old girl
20 now?

21 PROSPECTIVE JUROR: No.

22 MR. BERGER: Because our position is, this is
23 not a truthful accusation. Does anybody have trouble
24 or would be upset with me because I have to do that?

25 PROSPECTIVE JUROR: No.

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1 MR. BERGER: Does anybody feel they'll be
2 over sympathetic to a young girl who testifies of a
3 tender age, just as critical in jurors evaluating her
4 testimony; is that correct?

5 PROSPECTIVE JUROR: Yes.

6 MR. BERGER: Mr. Aslav, any problem with
7 that?

8 PROSPECTIVE JUROR: No.

9 MR. BERGER: Yesterday the Court, Ms. Iorio,
10 at the end of the case, if eleven people think there's
11 a guilty verdict and you are the only one that thinks
12 it's a not guilty verdict, would you give in simply
13 because of the numbers?

14 PROSPECTIVE JUROR: No.

15 MR. BERGER: Would you stay with your own
16 conviction?

17 PROSPECTIVE JUROR: Yes.

18 MR. BERGER: Would you stay with your own
19 principles?

20 PROSPECTIVE JUROR: Yes.

21 MR. BERGER: You are strong enough to be able
22 to do that. If eleven people are looking at you, the
23 youngest person on the panel, what do you know, we have
24 more life experiences, who knows what the argument will
25 be. The point is, you need twelve individual minds

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1 making a judgment because if you gave in simply because
2 of the numbers, then it would be eleven making that
3 judgment, not twelve. Does anybody feel not strong
4 enough to withstand such pressure? Do all of you feel
5 you are your own person and can stand that pressure?

6 THE COURT: About two more minutes.

7 MR. BERGER: Mr. Christie, if you were the
8 defendant charged with these crimes, would you be
9 satisfied with twelve Mr. Christies judging you?

10 PROSPECTIVE JUROR: I would believe twelve
11 individuals, I think that would be more fair, but I
12 think I could be fair in this case because I know
13 that's what you are asking.

14 MR. BERGER: Only you know your frame of
15 mind. I don't. I have a very limited period of time
16 to ask questions and find out about you. So, you know
17 how fair your frame of mind is at this point in time.
18 I don't. I'm asking you a question. If you were the
19 defendant, would you be satisfied with twelve people
20 with your present frame of mind judging?

21 PROSPECTIVE JUROR: Absolutely.

22 MR. BERGER: Are you that fair and just as
23 prepared?

24 PROSPECTIVE JUROR: I'm prepared to divorce
25 the emotions from the logic of the case.

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1 MR. BERGER: Ms. Rodriguez, would you be
2 satisfied judging?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Ms. Brown?

5 PROSPECTIVE JUROR: Yes.

6 MR. BERGER: Ms. Coleman?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: Ms. Fusco?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: Ms. Iorio?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: Mr. Aslav?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERGER: Ms. Jergensen?

15 PROSPECTIVE JUROR: Absolutely.

16 MR. BERGER: Ms. DiNapoli?

17 PROSPECTIVE JUROR: Yes.

18 MR. BERGER: Mr. Pascucci?

19 PROSPECTIVE JUROR: Yes.

20 MR. BERGER: What newspapers and magazines,
21 Mr. Christie?

22 PROSPECTIVE JUROR: Unfortunately, I do not
23 follow many newspapers or magazines. Magazines are
24 mostly sports magazines. I don't get my news from
25 newspapers.

1 MR. BERGER: Do you have friends who are
2 police officers?

3 PROSPECTIVE JUROR: Correct.

4 MR. BERGER: Should I be concerned about
5 that?

6 PROSPECTIVE JUROR: None of them are close.

7 MR. BERGER: You wouldn't owe them any
8 explanation?

9 PROSPECTIVE JUROR: This isn't their
10 business.

11 MR. BERGER: You sat on a criminal case, what
12 was the charge?

13 PROSPECTIVE JUROR: DUI.

14 MR. BERGER: Before I get to Ms. Rodriguez,
15 you will all assure me, no matter what evidence you
16 hear during the course of the trial, keep an open mind
17 and wait until the end of the case, the arguments of
18 counsel and the charges by the judge before you
19 consider what it actually means. Do you all understand
20 the importance of keeping that open?

21 Ms. Rodriguez, any newspapers, magazines?

22 PROSPECTIVE JUROR: No.

23 MR. BERGER: Ms. Brown, newspapers and
24 magazines?

25 PROSPECTIVE JUROR: No.

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1 MR. BERGER: Your sister is a police officer?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Do you talk to her often?

4 PROSPECTIVE JUROR: No.

5 MR. BERGER: Do you owe her any explanation
6 if your verdict was not guilty in this case?

7 PROSPECTIVE JUROR: No.

8 MR. BERGER: Mr. Coleman?

9 PROSPECTIVE JUROR: Time Magazine and the New
10 Yorker.

11 MR. BERGER: Ms. Fusco?

12 PROSPECTIVE JUROR: Fashion magazine.

13 THE COURT: Your two cousins are police
14 officers and friends as well are police officers?

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: One, you were told by the Judge
17 not to talk about the case to anybody. Would you think
18 you should be concerned you have friends and cousins
19 who are police officers?

20 PROSPECTIVE JUROR: I don't talk to them
21 about that.

22 MR. BERGER: You would make them up, you are
23 your own person?

24 PROSPECTIVE JUROR: Yes.

25 MR. BERGER: You wouldn't owe them any

1 explanation if your verdict was not guilty?

2 PROSPECTIVE JUROR: No.

3 MR. BERGER: Ms. Iorio?

4 PROSPECTIVE JUROR: Newsday. I read health
5 magazines, fashion magazines.

6 MR. BERGER: You, too, have friends who are
7 police officers?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: Should I be concerned about
10 that?

11 PROSPECTIVE JUROR: No.

12 MR. BERGER: You wouldn't owe them an
13 explanation if your verdict is not guilty here?

14 PROSPECTIVE JUROR: No.

15 MR. BERGER: There will come a time you will
16 talk to people. You will talk about your experience as
17 a juror?

18 PROSPECTIVE JUROR: No.

19 MR. BERGER: Mr. Aslav, newspapers,
20 magazines?

21 PROSPECTIVE JUROR: The Post. Mostly sports.

22 MR. BERGER: You have friends who is a Nassau
23 County police officer?

24 PROSPECTIVE JUROR: He's a relative of my
25 ex-wife.

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1 MR. BERGER: Is that good or bad? It's not a
2 factor?

3 PROSPECTIVE JUROR: No.

4 MR. BERGER: Ms. Jergensen?

5 PROSPECTIVE JUROR: Not really.

6 MR. BERGER: Your dad is or was a New York
7 retired detective. Would you owe him an explanation if
8 your verdict should be not guilty?

9 PROSPECTIVE JUROR: Not at all. I don't talk
10 to him all of the time.

11 MR. BERGER: And you all recognize sometimes
12 the charges that are brought are correct and sometimes
13 they're not and that's what we decide here?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: Ms. DiNapoli?

16 PROSPECTIVE JUROR: Newsday and some trade
17 publications. I'm in the freight business. I read
18 industry publications.

19 MR. BERGER: What was the charge in the
20 criminal case that you sat in a few years ago?

21 PROSPECTIVE JUROR: Murder.

22 MR. BERGER: Mr. Pascucci?

23 PROSPECTIVE JUROR: Newsday, Daily News, Post
24 and Sports Illustrated. And I have no friends and
25 nobody in law enforcement.

1 MR. BERGER: You work with children?

2 PROSPECTIVE JUROR: In 1989, I was working in
3 the Bi-squad in Manhattan south. They had a
4 subsection, NYPD detective, and two FBI agents that
5 worked on crimes, sexual exploitation of children, task
6 force. It was called investigated crimes committed
7 against children. Most of them were pedophilia related
8 crimes. It was men and little boys.

9 MR. BERGER: Did you ever see an occasion
10 where it was a false claim of pedophilia?

11 PROSPECTIVE JUROR: No, not in my experience.
12 It was only for six months and that six month time
13 period I didn't come across a false claim.

14 MR. BERGER: We're making that claim here.
15 Is that something I should be concerned about?

16 PROSPECTIVE JUROR: No, you shouldn't be
17 concerned about it.

18 MR. BERGER: Why not?

19 PROSPECTIVE JUROR: I think Mr. Ramos
20 deserves a fair hearing and maybe he is innocent. We
21 have to listen to the case to find out.

22 MR. BERGER: Okay.

23 THE COURT: Finish up, please.

24 MR. BERGER: Bumper stickers, Mr. Christie.

25 PROSPECTIVE JUROR: In your hopes, not your

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1 fears.

2 MR. BERGER: Ms. Rodriguez?

3 PROSPECTIVE JUROR: Nothing like pole peeled
4 bananas.

5 MR. BERGER: Mr. Nivegro?

6 PROSPECTIVE JUROR: No.

7 MR. BERGER: Ms. Brown?

8 PROSPECTIVE JUROR: No.

9 MR. BERGER: Mr. Nieves?

10 PROSPECTIVE JUROR: No.

11 MR. BERGER: Ms. Coleman?

12 PROSPECTIVE JUROR: No.

13 MR. BERGER: Ms. Fusco?

14 PROSPECTIVE JUROR: No.

15 MR. BERGER: Mr. Pascucci?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: Ms. DiNapoli?

18 PROSPECTIVE JUROR: No.

19 MR. BERGER: Ms. Jergensen?

20 PROSPECTIVE JUROR: No.

21 MR. BERGER: Mr. Aslav?

22 PROSPECTIVE JUROR: No.

23 MR. BERGER: Ms. Iorio?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Before I ask you all to step out,

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1 I want to direct my attention to Ms. Brown. Yesterday
2 there was a concern about your job, if I recall
3 correctly, you have two jobs, ma'am. Is that still a
4 concern for you, or have you worked out you would be
5 able to sit if you were picked?

6 PROSPECTIVE JUROR: I worked it out.

7 THE COURT: Very good. I'll ask you to step
8 outside for ten minutes. Don't discuss the case.
9 Don't go on the phones and look anything up. Use the
10 facilities and we'll see you soon.

11 (Whereupon, the jury panel exited the
12 courtroom.)

13 THE CLERK: Defense counsel ready?

14 MR. PERRI: Yes.

15 MR. BERGER: Yes.

16 THE CLERK: The People have used four perempt
17 challenges. The defense has used three.

18 Do the People have any challenge for cause,
19 jurors number one through twelve of those that are
20 remaining in those seats?

21 MR. PERRI: No, your Honor.

22 THE CLERK: Defense counsel, challenge for
23 cause?

24 MR. BERGER: No.

25 THE CLERK: People, do you wish to peremptory

1 challenge in seats one through twelve?

2 THE COURT: People.

3 MR. PERRI: No, your Honor.

4 THE CLERK: Defense counsel, do you wish to
5 exercise a perempt challenge as to jurors one through
6 twelve?

7 MR. BERGER: Yes.

8 THE COURT: Number and name.

9 MR. BERGER: Number four, Ms. Brown, number
10 eight, Mr. Pascucci, number ten, Ms. DiNapoli, number
11 twelve, Mr. Aslav.

12 THE COURT: That's it. We only went up to
13 twelve.

14 THE CLERK: James Christie will be juror
15 number four, Deidra Rodriguez will be will juror number
16 five, Toni Coleman will be juror number six, Maria
17 Fusco will be juror number seven, and Priscella
18 Jergensen will be juror number eight; agreed, People?

19 MR. PERRI: Yes, your Honor.

20 THE CLERK: Agreed, defense counsel?

21 MR. BERGER: Yes, your Honor.

22 THE CLERK: Do the People have a challenge
23 for cause for juror number thirteen?

24 MR. PERRI: No, your Honor.

25 THE CLERK: Defense counsel, do you wish to

1 cause juror number thirteen?

2 MR. BERGER: No, your Honor.

3 THE CLERK: People, do you wish to exercise a
4 perempt challenge for juror number thirteen?

5 MR. PERRI: Yes, your Honor, People exercise
6 a perempt challenge.

7 (Whereupon, the jury entered the courtroom.)

8 THE CLERK: May I have your attention,
9 please. When I call your name, you have been selected
10 to serve on this jury and please remain seated.

11 Juror number four will be James Christie,
12 juror number five, Deidra Rodriguez, juror number six,
13 Toni Coleman, juror number seven, Maria Fusco, juror
14 number eight, Priscella Jergensen. If I called your
15 name, please remain seated.

16 If I did not call your name, you are excused
17 from this panel with the thanks of this Court. Please
18 gather your personal belongings and step out of the box
19 and the court officer will instruct you where to report
20 next if your name was not called.

21 Are the remaining jurors satisfactory to the
22 People?

23 MR. PERRI: Yes, your Honor.

24 MR. BERGER: And to the defendant?

25 THE CLERK: Shall I swear them?

1 (Whereupon, the jurors were duly sworn by the
2 clerk of the court.)

3 THE COURT: Welcome aboard, everyone. As you
4 heard me say yesterday, I'm now going to excuse you for
5 the day. The day is yours. You are getting credit for
6 the entire day of jury service. You do not have to be
7 back here until Monday morning at 9:30. Realize we
8 won't be able to get started until everyone is here, so
9 try to get here as close to 9:30 as possible.

10 Also, you may have noticed parking is a real
11 problem around here, so you might want to get here a
12 little earlier to make sure you get a spot and there
13 will be room. You will have to wait until we need you
14 in the courtroom.

15 Before I let you go, let me give you the
16 admonitions. Keep an open mind throughout the process
17 and throughout the trial. Do not discuss the case
18 among yourselves or with anyone else during the trial.
19 Do not permit anyone to discuss the case in your
20 presence. Do not talk to lawyers, witnesses, or the
21 defendant about anything during your trial, and
22 remember, if you see us at any point in time in the
23 hallway, or at a local pizzeria, or establishment, do
24 not take it personally. Do not visit or view the place
25 where the charged crime was allegedly committed or any

1 other place mentioned in this case.

2 If there is any news coverage of the case, do
3 not read, view or listen to any accounts or discussions
4 of the case if it is reported by the news media.

5 Do not attempt to research any fact, issue,
6 or law related to the case, whether by discussion with
7 others or by research in the library, or on the
8 Internet, or by any other means or source.

9 Have a great rest of the week. Have a great
10 Mother's Day to those that celebrate. See you Monday
11 morning.

12 (Whereupon, the jurors exited the courtroom.)

13 THE COURT: Anything for the record?

14 MR. PERRI: No, your Honor.

15 MR. BERGER: No, your Honor.

16 THE COURT: Let's take a break. We'll get
17 the next panel up.

18 (Whereupon, a short recess was taken.)

19 THE CLERK: Case on trial continued,
20 Indictment 742N of 2014, People of the State of New
21 York vs. Daniel Ramos.

22 All parties are present. The jury is not
23 present at this time.

24 People ready?

25 MR. PERRI: Yes, your Honor.

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1 THE CLERK: Defense counsel ready?

2 MR. BERGER: Yes, your Honor.

3 THE COURT: We have another set of jurors
4 ready to come in, so let's bring them in.

5 (Whereupon, the jury panel entered the
6 courtroom.)

7 THE CLERK: Supreme Court Part 43, before
8 Honorable Teresa Corrigan. I ask you to please rise,
9 raise your right hand so I could swear you in.

10 (Whereupon, the jury panel was duly sworn by
11 the clerk of the court.)

12 THE COURT: Welcome, everyone. As you just
13 heard, this is Nassau County Supreme Court Part 43. My
14 name is Teresa Corrigan. I'll be the Judge in this
15 matter, and we're about to continue the process of
16 selecting a jury in a criminal case. It's estimated
17 that the trial will take approximately two weeks, but
18 not all in a row. There will be lots of days off in
19 between. I will give you the schedule a little later
20 on as we go through this process.

21 Before I do explain the jury selection
22 process to you, I do want to thank you all for being
23 here. I realize this is -- this could be an
24 inconvenience for many of you. I'm sure you could
25 appreciate a trial by jury is and has been the

1 cornerstone of our justice system, yours and mine, for
2 more than two hundred years, and it's the best way to
3 resolve these matters.

4 The name of the case we're here for is the
5 People of State of New York against Daniel Ramos. The
6 People of the State of New York in that title means the
7 government of the State of New York. The government is
8 represented by the Acting District Attorney of Nassau
9 County, Madeline Singas. In referring to the People of
10 the State of New York, that is in referring to the
11 government, we normally use the shorthand terminology
12 of the People, and that is what you will hear
13 throughout this trial. That part of the title of this
14 case refers to the People of the State of New York. It
15 does not mean that the People of this state want any
16 particular verdict. The People of this state are
17 satisfied by the just verdict of a fair jury.

18 Mr. Ramos is often referred to as the
19 defendant in this matter, and he is charged with two
20 counts. The first count he is charged with is the
21 crime of criminal sexual acts in the first degree, and
22 the second count is endangering the welfare of a child.

23 Now, we begin the trial by selecting a jury.
24 As you heard me say, we're continuing this. We picked
25 some jurors. We need to continue picking to get to a

1 total of twelve people. In addition to the twelve
2 jurors, we're also going to select two alternate
3 jurors. An alternate juror is one who may serve in
4 place of one of the twelve yours should an unforeseen
5 extraordinary emergency arise that makes it totally
6 impossible for one of the first twelve jurors to
7 complete the trial. Juror number one has already been
8 picked and that person will be the foreperson for this
9 jury.

10 During the trial, the foreperson has the same
11 responsibilities as any other juror. At the end of the
12 trial, however, during the jury's deliberations, we do
13 ask the foreperson to sign any written inquiry which
14 the jury sends to the Court, and also to announce the
15 jury's verdict, guilty or not guilty, here in this
16 courtroom.

17 The foreperson can, but does not have to
18 chair the jury's discussion during deliberations. If
19 any of you have participated in jury selection in a
20 criminal case before, you may notice that method of
21 jury selection varies to some extent from judge to
22 judge. But the essence of each procedure is the same.
23 It involves a combination of explanation of the law and
24 questions all designed to help each of you as well as
25 the attorneys decide whether you could at this time sit

1 as a juror in this case and be fair in judging whether
2 the defendant was guilty or not guilty of the charged
3 crimes.

4 My jury selection procedure is as follows:
5 First, I'm going to explain some of the basic law that
6 applies to this case and all criminal trials. I do
7 this in part, if you are selected as a juror, you will
8 be required to follow the law, whether you agree with
9 it or not. Later, I will be asking you whether you
10 understand the law that I have explained and whether
11 you can accept it and follow it.

12 Second, the clerk will call the random names
13 of fourteen jurors who will take a seat in the area on
14 my left, which is called the jury box. I will then ask
15 the jurors in the jury box a series of questions that
16 you will respond to either by a show of hands or by
17 some verbal response if that is required.

18 Third, each lawyer will then be given an
19 opportunity to address those individuals who are
20 sitting in the box.

21 And finally, when the lawyers are finished,
22 all of the jurors will be excused for a few minutes and
23 it is during that time that the lawyers will be given
24 an opportunity, as required by our law, to excuse one
25 or more of the jurors in the jury box. The jurors who

1 are not excused become members of the jury, and we will
2 repeat that procedure until we have twelve sworn jurors
3 and two alternates.

4 Let me take a moment to introduce the parties
5 and the lawyers to you. Later in the proceeding I'll
6 ask you if you know the defendant or any of the
7 attorneys. Again, the defendant in this case is
8 Mr. Daniel Ramos, and he is represented by Michael
9 Berger.

10 MR. BERGER: Good morning.

11 THE COURT: In this case, the People are
12 represented by the Acting District Attorney of Nassau
13 County Madeline Singas. Ms. Singas, in turn, is
14 represented by Assistant District Attorney Anthony
15 Perri.

16 The purpose of the trial is for the jury to
17 decide on the basis of evidence presented in a
18 courtroom whether a person who is accused of a crime by
19 the People is guilty or not guilty of that crime.

20 In a trial, it is the jury's responsibility
21 to evaluate fairly the testimony and other evidence
22 presented here in this courtroom and decide what the
23 believable and accurate facts are with respect to what,
24 if anything, took place at the time and place in
25 question. The jury is, therefore, also known as the

1 finders of the facts.

2 After the jury has determined the facts, the
3 jury must apply to the facts the law, as I explained it
4 to you, regardless of whether the jury agrees with the
5 law and then without fear, favor, bias, prejudice,
6 sympathy, or consideration of a possible sentence or
7 punishment, you must render a decision known as a
8 verdict, stating whether the defendant is guilty or not
9 guilty of a charged crime or crimes.

10 To decide the facts of the case, the jury
11 must consider only the evidence presented in this case
12 in this courtroom. It is important that you understand
13 then what evidence is, because that is what you base
14 your decision on, and it is equally important to
15 understand some things that you will hear about that
16 are not evidence, because you do not base your decision
17 on those matters.

18 So first, what is evidence? There are three
19 basic types. One, there is evidence that comes from a
20 stipulation of the parties. A stipulation is
21 information both parties agree to present to the jury
22 as evidence without calling a witness to testify to
23 that information.

24 Second, there is evidence that comes from the
25 introduction into evidence of physical objects, such as

1 a document, or photographs, clothing, or even a chart.
2 And namely, as you know, the not common form of
3 evidence, is the testimony of people based on questions
4 asked by the lawyers, and perhaps, by the Court, but
5 never by the jury.

6 So, then what is not evidence? First, the
7 charges in this case are set forth in a document known
8 as an indictment. The indictment is simply a piece of
9 paper that states the charges. Neither the indictment
10 itself, nor the fact that an indictment has been filed,
11 constitutes evidence. The defendant has pleaded not
12 guilty to the charges contained in the indictment, and
13 the trial is to decide whether the defendant is guilty
14 or not guilty.

15 Second, what the lawyers say at any time is
16 not evidence. The lawyers are not witnesses. What I
17 say is not evidence, because I am not a witness.

18 Third, a question of a witness by a lawyer or
19 by the Court, by itself is not evidence. It is the
20 question with the answer that is the evidence.

21 So, you are not to conclude from a question
22 alone that anything assumed in the question to be true,
23 is true, no matter how detailed or specific the
24 question is. Nor are you to draw any inference either
25 favorable or unfavorable to either side from the

1 content of a question alone. You must consider the
2 question with the witness's answer and decide whether
3 you find the answer believable and accurate, because
4 again, it is the question with the answer that is the
5 evidence.

6 There are three fundamental principles of law
7 that service the foundation of criminal justice and
8 they apply in all criminal trials. They are the
9 presumption of innocence, the burden of proof, and the
10 requirements of proof beyond a reasonable doubt.

11 Throughout these proceedings, the defendant
12 is presumed to be innocent. As a result, you must find
13 the defendant not guilty, unless on the evidence
14 presented at this trial you conclude that the People
15 have proven the defendant guilty beyond a reasonable
16 doubt. That a defendant does not testify as a witness,
17 is not a factor from which any inference unfavorable to
18 the defendant may be drawn. The defendant is not
19 required to prove that he is not guilty. In fact, the
20 defendant is not required to prove or disprove
21 anything.

22 To the contrary, the People have the burden
23 of proving the defendant guilty beyond a reasonable
24 doubt. That means before you can find the defendant
25 guilty of a crime, the People must prove beyond a

1 reasonable doubt every element of the crime, including
2 that the defendant is the person who committed that
3 crime.

4 The burden of proof never shifts from the
5 People to the defendant. If the People fail to satisfy
6 their burden of proof, you must find the defendant not
7 guilty. If the People satisfy their burden of proof,
8 you must find the defendant guilty. Just because the
9 defendant is sitting in that chair accused of and
10 charged with a crime, does not and cannot mean that he
11 starts this case with any sort of strike against him.
12 In your eyes he's presumed innocent. You may not and
13 you must not begin your evaluation of this case by
14 assuming just because he is seated there, he must have
15 done something wrong.

16 You heard me use the term proof beyond a
17 reasonable doubt, and the law uses that term to tell
18 you how convincing the evidence of guilt must be to
19 permit a verdict of guilty.

20 The law recognizes in dealing with human
21 affairs there are very few things in this world we know
22 with absolute certainty. Therefore, the law does not
23 require the People to prove a defendant guilty beyond
24 all possible doubt. On the other hand, it is not
25 sufficient to prove that the defendant is probably

1 guilty.

2 In a criminal case, the proof of guilt must
3 be stronger than that. It must be beyond a reasonable
4 doubt. A reasonable doubt is an honest doubt of the
5 defendant's guilt for which a reason exists based upon
6 the nature and quality of the evidence. It is an
7 actual doubt, not an imaginary doubt. It is a doubt
8 that a reasonable person acting in a matter of this
9 importance would be likely to entertain because of the
10 evidence that was presented or because of the lack of
11 convincing evidence.

12 Proof of guilt beyond a reasonable doubt is
13 proof that leaves you so firmly convinced that the
14 defendant's guilt, that you have no reasonable doubt of
15 the existence of any element of the crime or of the
16 defendant's identity as the person who committed that
17 crime. If you are not convinced beyond a reasonable
18 doubt that the defendant is guilty of a charged crime,
19 you must find the defendant not guilty of that crime.

20 If you are convinced beyond a reasonable
21 doubt that the defendant is guilty of a charged crime,
22 you must find the defendant guilty of that crime.

23 Because this is a criminal case, the police
24 are involved and will be testifying at this trial. We
25 treat police officers the same way as we do the

1 civilian witnesses. Police officers can tell the
2 truth, be mistaken or lie, just like anyone else. You
3 must evaluate a police officer's testimony for
4 truthfulness and accuracy in the same way you would
5 evaluate the testimony of any other witness.

6 Some of you may have been the unfortunate
7 victim of a crime or know someone who has been a
8 victim. Certainly, that was an unpleasant experience
9 for you if you had such an experience or know someone
10 who has. You may not use this trial as the vehicle to
11 exact your revenge upon the person who perpetrated
12 crimes against you or your friend, or to try to right
13 or wrong done to someone in the past, having nothing at
14 all done with this defendant and this case. As I'm
15 sure you can appreciate and realize this courtroom is
16 not the place for that.

17 During the trial you will hear me and perhaps
18 the lawyer will hear the term element of the crime.
19 What constitutes a crime is defined by the written law
20 of New York. Each written definition normally contains
21 several parts, including the specifications of conduct
22 prohibited, the state of mind with respect to the
23 conduct must have been performed and some instances as
24 a result from that conduct.

25 Those parts of the written definition of a

1 charged crime, plus the identification of a person as
2 the person who committed the crime charged, is what is
3 meant by the term elements of the crime charged.

4 Let me talk to you about deliberations as the
5 jury's verdict, whether guilty or not guilty, it must
6 be unanimous. That is each and every juror must agree
7 to the verdict. Since twelve people seldom agree on
8 anything, to reach a verdict you must deliberate with
9 the other jurors.

10 What does it mean to deliberate? It means
11 you should consult with each other, listen to each
12 other, give each other's views careful consideration
13 and reason together when considering the evidence, and
14 when you do deliberate, you should do so with a view
15 towards reaching an agreement, if that condition can be
16 done without surrendering individual judgment.

17 Each of you must decide the case for
18 yourself, but only after a fair and impartial
19 consideration of the evidence with the other jurors.
20 You should not surrender an honest view of the evidence
21 simply because you want the trial to end or you are
22 outvoted. At the same time, you should not hesitate to
23 reexamine your views and change your opinions if you
24 become convinced that they were not correct.

25 At this time I'm going to ask the clerk to

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1 call fourteen names at random. You will then take a
2 seat in the jury box. After you are seated, I'll ask
3 each of you in the jury box a series of questions, and
4 like I stated earlier, after I'm done with my
5 questions, each of the attorneys will be given an
6 opportunity to question you.

7 Please fill the box.

8 THE CLERK: If your name is called, gather
9 your personal belongings and step up and follow the
10 instructions of the court officer.

11 Seat number one, Jill Kennedy, K-E-N-N-E-D-Y.

12 Seat number two, Carlos Tavora, T-A-V-O-R-A.

13 Seat number three, Paul McNamara,

14 M-C-N-A-M-A-R-A.

15 Seat number four, Beverly Campbell,

16 C-A-M-P-B-E-L-L.

17 Seat number five, Jose Morales,

18 M-O-R-A-L-E-S.

19 Seat number six, Dominique Garrett. First

20 name D-O-M-I-N-I-Q-U-E. Last name spelled

21 G-A-R-R-E-T-T.

22 Seat number seven, Richard Aquino,

23 A-Q-U-I-N-O.

24 Seat number eight, Kathryn Westbrooke,

25 K-A-T-H-R-Y-N. Last name spelled W-E-S-T-B-R-O-O-K-E.

1 Seat number nine, Cynthia Woodhouse,
2 W-O-O-D-H-O-U-S-E.

3 Seat number ten, Patricia McLean,
4 M-C-L-E-A-N.

5 Seat number eleven, Carolyn J. Harvey,
6 H-A-R-V-E-Y.

7 Seat number twelve, Karrell Kallenberg.
8 First name spelled K-A-R-R-E-L-L. Last name
9 K-A-L-L-E-N-B-E-R-G.

10 Seat number thirteen, Richard J. Michaels,
11 M-I-C-H-A-E-L-S.

12 Seat number fourteen, Kimberly R. Vargas,
13 V-A-R-G-A-S.

14 THE COURT: Welcome everyone to the front of
15 the courtroom. Let me say this to the people remaining
16 in the audience, I can pretty much guarantee you at
17 some point today you will find yourself up here in the
18 front of the courtroom, so if you would please continue
19 to listen to what I'm doing, because I don't want to
20 have to repeat all of my questions all over again when
21 you find yourself up here in the front. Thank you
22 everyone in the back for continuing to listen.

23 Let me turn to those of you in the front.
24 The first thing I need to find out, does anybody up
25 here in the front have a problem with the English

1 language?

2 Mr. Tavora, yes, sir, have you understood
3 everything that has gone on so far?

4 PROSPECTIVE JUROR: I can't hear. That's
5 all. Not clear.

6 THE COURT: People?

7 MR. BERGER: Consent.

8 MR. PERRI: Consent.

9 THE COURT: Mr. Tavora, we'll find a
10 different case for you to have a better ability to hear
11 and understand. Thank you.

12 THE CLERK: Elizabeth Norton, N-O-R-T-O-N.
13 Please take seat number two.

14 THE COURT: Welcome. Any problem with the
15 English language?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Did anyone else have their hand
18 up for language? Let the record reflect no other hands
19 have been raised.

20 First thing I want to do is ask each of you
21 if you will be able to follow those principles of law
22 that I gave you earlier. You don't have to like them.
23 You don't even have to agree with them, but I need to
24 know you are going to follow them because that is the
25 law that is required if you sit as a member on the

1 jury.

2 Let me remind you what those are. One, the
3 defendant is presumed innocent.

4 Two, the People have the burden of proof, the
5 proof of guilt beyond a reasonable doubt.

6 And three, if the defendant does not testify
7 as a witness, that is not a fact from which any
8 inference unfavorable to the defendant may be drawn by
9 you.

10 Can each of you give me an assurance that you
11 will follow those principles of law? If you cannot,
12 please raise your hand. Let the record reflect no
13 hands have been raised.

14 Can each of you promise when it comes time to
15 deliberate at the end of the trial, in order to reach a
16 verdict of guilty or not guilty, that each of you will
17 discuss the evidence with your fellow jurors and each
18 of you will consider what your fellow jurors have to
19 say, all with a view towards reaching a unanimous
20 verdict, guilty or not guilty, it can be done without
21 surrendering individual judgment.

22 Let me explain why I say that. I'm married
23 to someone I say has a type A personality. He is right
24 no matter what. It doesn't matter what you put in
25 front of his face, he's right. The sky could be as

1 blue as could be, he would call it pink. That's okay.
2 I know that. I'm married to him, so it's good to go.
3 That personality is not so good for a jury. You want
4 to go into that jury room and be able to discuss, and
5 to listen, and to voice an opinion and to hear other
6 people speak. There's nothing wrong with having a
7 personality like my husband has. If that is you, this
8 is probably not the case for you. I need you to raise
9 your hand if you are that type of personality. You
10 know what, I can't do that. I appreciate this honesty.

11 Mr. Aquino, you are it's my way or the
12 highway?

13 PROSPECTIVE JUROR: Usually. I think my wife
14 would agree with you.

15 THE COURT: Now, my question to you is: If I
16 tell you you have to put aside it's my way or the
17 highway and you have to be willing to listen to eleven
18 other people, can you give me your assurance you would
19 do that if you were picked as a juror?

20 PROSPECTIVE JUROR: I would certainly try.

21 THE COURT: I'll come back to you on the
22 trying. That makes me a little nervous when we hear
23 trying.

24 Mr. Michaels, if I said to you, okay, I get
25 it, no problem with that, can you give me your

1 assurance you will change your ways and when you get
2 into that room you will be able to listen to everyone
3 else and maybe even have your opinion changed based on
4 what other people say to you? Do you think you could
5 do that?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Fair enough.

8 Do either of you want to ask Mr. Aquino any
9 questions?

10 MR. BERGER: You say you will try, will that
11 be difficult for you to do that?

12 PROSPECTIVE JUROR: I'm going to try. I want
13 to be as fair as I can be. I know what my personality
14 is.

15 THE COURT: People, do you have any
16 questions?

17 MR. PERRI: If the judge instructs you that
18 you have to listen to the other jurors during
19 deliberations, examine the evidence and make individual
20 determination based on those conversations about what
21 you believe, are you capable of doing that?

22 PROSPECTIVE JUROR: Of course, I am.

23 MR. PERRI: You are capable of being fair and
24 impartial even though you have strong ideas? You will
25 deliberate and listen and be fair and impartial?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: I'll leave you in that seat for a
3 little while, and there's a lot more questions. We'll
4 develop that with you as we proceed.

5 Mr. Michaels, consent?

6 MR. BERGER: Consent.

7 MR. PERRI: Consent.

8 THE COURT: Thank you, Mr. Michaels, for your
9 honesty. We'll find a different case for you.

10 THE CLERK: Gwendolyn House, H-O-U-S-E.

11 THE COURT: Welcome. You heard everything I
12 said so far?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Do you have anything you need to
15 tell me?

16 PROSPECTIVE JUROR: No.

17 THE COURT: The next thing I need to ask of
18 all of you up front, can you each promise you will
19 decide this case without fear, favor, sympathy, bias,
20 or prejudice, for or against the People, the defendant,
21 or a witness that is called to testify, be that witness
22 is a police officer, or a civilian? If you cannot give
23 me that assurance, can you please raise your hand.

24 No hands have been raised.

25 You heard me introduce the defendant,

1 Mr. Ramos, and his attorney, Mr. Berger, and the
2 People's attorney, Mr. Perri. You heard my name is
3 Teresa Corrigan, and you have seen my court staff as
4 you come in and out of the courtroom. Please let me
5 know by a show of hands if any of you believe you know
6 any of us or we look familiar to you from anywhere.

7 Let the record reflect no hands have been
8 raised.

9 THE COURT: At this point, I'll read you a
10 list of names. These are individuals who might be
11 witnesses whose names you simply might hear during the
12 trial. It's important that we know whether or not any
13 of these individuals are known to you or are familiar
14 to you. Please listen carefully. At the end of
15 reading the names, I'll ask if any of you believe you
16 know these people. Crystal Ramirez, Mya Feliciano
17 Ramirez, Sincere Feliciano Ramirez, Police Officer
18 Joseph Boccio, Police Officer Carl Wigand, Police
19 Officer Thomas Tedeschi, Detective Maurice Baran,
20 Detective Reinald Pacheco, Nurse Kathleen McAllister,
21 Christopher Chillseyzn, Christy Hernandez, Karl Reich,
22 Stephanie Ramos, or any supervisor at the NICE and NICE
23 Transportation Company. Do any of you believe you know
24 any of those individuals that I just mentioned?

25 Let the record reflect -- I saw a hand in

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1 the back. If you make it up here to the front, make
2 sure you know that. Those of you in the front, I did
3 not see any hands. We'll continue moving on.

4 The next two questions, I need you to
5 seriously consider, they're usually the ones that allow
6 the Court to see most of you walk out the door, and I
7 don't want that to happen if it doesn't need to.

8 Health; I said the case will be about two
9 weeks. I also said, just so you know, the way we work
10 it, usually you will be asked to come to court around
11 9:30 in the morning. Hopefully, we'll have you in the
12 courtroom no later than ten o'clock, 9:45 is preferred.
13 We'll work to around 12:30 or so. You get a lunch
14 break to around two and then we leave at 4:30. After
15 about an hour's worth of sitting, you will get a break
16 to use the facility, stretch your legs, do all of the
17 things.

18 I need to know, with that in mind, do any of
19 you have any health issues that makes it completely
20 impossible for you to sit? That would include doctors'
21 appointments you can't change, that would include any
22 sort of, maybe, surgeries, if you are on medication
23 that makes you drowsy, or you can't concentrate on any
24 medical issues. Raise your hand, keep them up so I
25 could take it down and we'll discuss it individually.

1 Hands.

2 To the people in the back, just remember that
3 if you are called up to the front, to let me know you
4 have an issue. Let's talk about the length of time of
5 the trial. Listen carefully, if you are picked today
6 as a juror, you will not be back here until Monday, May
7 11th, so this is the only day you need to be here this
8 week if you are picked. After that next week we will
9 work Monday, the 11th, Tuesday the 12th, Wednesday the
10 13th, and Thursday the 14th. You will be off on the
11 15th to either go back to work or do whatever you need
12 to do to catch up on what you might have missed being
13 here Monday through Thursday. The following week you
14 will only be asked to be here three days. Tuesday the
15 19th, Wednesday the 20th, and Thursday the 21st. You
16 are off for Memorial Day weekend. You are off the
17 Friday. You are off the Monday. Does anyone have
18 plans Friday, Saturday, Monday? You are good to go.
19 You will be off from court. The next week we'll ask
20 you to be back here on Tuesday the 26th, and only if
21 it's necessary you will be here the 26th, 27th, 28th,
22 29th. That's four days that week, Tuesday through
23 Friday. We don't expect the case to go past the 29th
24 for any reason. With that schedule in mind and those
25 days off, please raise your hand if you have an issue

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1 that makes it completely impossible for you to sit, not
2 that it's inconvenient, but that it's impossible for
3 you to sit. Keep those hands up until I get you marked
4 down.

5 Let me start with you, Mr. McNamara.

6 PROSPECTIVE JUROR: I'm subpoenaed for a
7 deposition on the 15th, which is the Friday, but on a
8 personal injury case.

9 THE COURT: That is okay because you wouldn't
10 be here. There might be other questions of you
11 regarding that matter, but as far as scheduling; is
12 that your only conflict?

13 PROSPECTIVE JUROR: As far as I know.

14 THE COURT: We'll keep you here. We're not
15 going to be working on the 15th.

16 Mr. Aquino.

17 PROSPECTIVE JUROR: I have several business
18 commitments for next week I haven't planned for. I
19 didn't know if it was a day, or two, or several weeks.

20 THE COURT: I'm going to assume they can't be
21 changed?

22 PROSPECTIVE JUROR: Not really.

23 THE COURT: Fair enough.

24 The next hand I saw was Westbrooke.

25 PROSPECTIVE JUROR: Yes.

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1 THE COURT: Yes.

2 PROSPECTIVE JUROR: Business commitments, as
3 well I have my own business and maybe times are
4 inconvenient and may not be able to make it because of
5 my income, so I would lose.

6 THE COURT: The last part of what you said,
7 am I right in believing if you are not at work, you are
8 not getting paid?

9 PROSPECTIVE JUROR: Correct.

10 PROSPECTIVE JUROR: There's some flexibility,
11 there may be one or two days that may be a little
12 pressing. I might get by the first week.

13 THE COURT: After the first week you will be
14 concerned about work?

15 PROSPECTIVE JUROR: Unless we have breaks and
16 go on-line and -- I don't know how it works. I would
17 like to sit, but --

18 THE COURT: Let me make sure. I don't want
19 to get rid of you unnecessarily. You heard what I
20 said. You need to commit to the court that you can
21 give me your undivided attention and the attorneys your
22 undivided attention between 9:30 and 12:30 and then
23 from 2:00 to 4:30; can you do that?

24 PROSPECTIVE JUROR: I believe I can.

25 THE COURT: Then you need to be here all of

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1 those days. You can't call and say today is not a good
2 day. I need you to commit to all of the days I
3 mentioned.

4 PROSPECTIVE JUROR: I did.

5 THE COURT: I'll leave you there for a little
6 while. Thank you for letting us know.

7 Ms. McLean.

8 PROSPECTIVE JUROR: Mine isn't something.
9 The 21st is difficult for me.

10 THE COURT: Do you have other plans for that
11 day?

12 PROSPECTIVE JUROR: My youngest daughter is
13 graduating college.

14 THE COURT: Thank you for letting me know.
15 Our kids do come first. Graduation does count as
16 something. You could let me know.

17 Ms. House.

18 PROSPECTIVE JUROR: On the 13th and 14th I'm
19 on vacation. Those two days my daughter has
20 appointments at Zucker Hillside, the 21st and 20th.
21 I'm on vacation until the 26th. I'll be in Bermuda.

22 THE COURT: Coming back on Wednesday.

23 PROSPECTIVE JUROR: Coming back Wednesday,
24 and I should be at work the 28th.

25 THE COURT: Let me ask you with regards to --

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1 Mr. Garrett, yes, sir?

2 PROSPECTIVE JUROR: I'm not sure if my job
3 pays me for the days.

4 THE COURT: Where do you work?

5 PROSPECTIVE JUROR: Boston Market. I'm not
6 sure if I get paid.

7 THE COURT: They probably only paying you for
8 a few days. We're going to be taking a break in a half
9 hour. I'm going to ask you to call over the lunch
10 break and report back to us at 2:15. Mark it down as a
11 possibility.

12 I'm sorry, Ms. Vargas.

13 PROSPECTIVE JUROR: Next Tuesday at twelve I
14 have a meeting at my daughter's school, and I don't
15 know if I could reschedule it. I could do every other
16 day. Just the 12th.

17 THE COURT: The 12th is the only day that is
18 bad for you?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: What time is the meeting?

21 PROSPECTIVE JUROR: 1:15.

22 THE COURT: Do you know how long it will
23 last?

24 PROSPECTIVE JUROR: Maybe an hour or two.

25 THE COURT: You don't believe you could

1 reschedule it?

2 PROSPECTIVE JUROR: I don't think so.

3 THE COURT: Did I miss anyone else?

4 Counselors, I'm looking at Mr. Aquino,
5 Ms. McLean, Ms. House, Ms. Vargas to start; consent?

6 MR. PERRI: Yes, your Honor.

7 MR. BERGER: Consent.

8 THE COURT: Mr. Aquino, Ms. McLean, who is in
9 seat ten, Ms. House and Ms. Vargas, you are excused
10 from this case with the thanks of the Court. There may
11 be a shorter case more beneficial for all of you. Step
12 out.

13 THE CLERK: Nicole Molly, M-O-L-L-Y, seat
14 number seven.

15 Jeffery Miller, first name spelled
16 J-E-F-F-E-R-Y. Last name spelled M-I-L-L-E-R, seat
17 number ten.

18 Fatim Jaffer, J-A-F-F-E-R. First name
19 spelled F-A-T-I-M, seat number thirteen.

20 Joanne Klein, K-L-E-I-N, seat number
21 fourteen.

22 THE COURT: Welcome all of you who joined us.

23 PROSPECTIVE JUROR: I'm a service contract
24 worker in a medical facility. I don't get paid if I
25 don't go to work. There is no working on the Internet.

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1 I don't get paid at all.

2 THE COURT: Do you know how many days?

3 PROSPECTIVE JUROR: There's nothing. I'm a
4 contract worker.

5 THE COURT: Understood. Thank you very much.

6 Mr. Miller, go ahead.

7 PROSPECTIVE JUROR: When you mentioned the
8 NICE company, I have a lawsuit against them.

9 THE COURT: Thank you for letting us know
10 that. Any other issues, any medical issues?

11 PROSPECTIVE JUROR: Yeah, my shoulder. I
12 have chronic pain.

13 THE COURT: Does that chronic pain prevent
14 you from concentrating for long periods of time?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Ms. Jaffer.

17 PROSPECTIVE JUROR: I recently moved to
18 Toronto, and I'm in the process of getting a PR card,
19 permanent residency. I'm only here until the 19th. I
20 came for my friends wedding, and I have jury duty. I'm
21 going back on the 19th.

22 THE COURT: And, Ms. Klein, anything?

23 PROSPECTIVE JUROR: I will be away from next
24 Tuesday for three weeks.

25 THE COURT: Any questions for those hot seats

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1 not going to be filled in in a minute?

2 MR. PERRI: No, your Honor.

3 MR. BERGER: No, your Honor.

4 THE COURT: Thank you, Ms. Molly, Mr. Miller,
5 Ms. Jaffer, and Ms. Klein. We'll find something else
6 for you.

7 Let me say to everyone remaining in the
8 audience, because people are walking out of here it
9 doesn't mean they're going home. They're going back to
10 central jury for another case. What I would like to
11 tell people, be careful what is behind door number two.
12 You never know.

13 THE CLERK: Linda S. Hayes, H-A-Y-E-S, seated
14 in number seven.

15 Seat number ten, Victor Pizzuto,
16 P-I-Z-Z-U-T-O.

17 Seat number thirteen, Maria Lopez, L-O-P-E-Z.
18 Warren T. Norman, N-O-R-M-A-N, seat number
19 fourteen.

20 THE COURT: Come to the front of the
21 courtroom. Let me see if there is anything you need.

22 Ms. Hayes, anything?

23 PROSPECTIVE JUROR: Difficulty for long
24 periods, but I will try. I have a collapsed vertebrae
25 in my back.

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1 THE COURT: What is a long period?

2 PROSPECTIVE JUROR: More than an hour. I
3 have to get up every hour.

4 THE COURT: If you are chosen, we'll have to
5 deal with it. We'll let you get up to stretch your
6 legs. That's what we try to do. Thank you for letting
7 me know that. Any other issues?

8 PROSPECTIVE JUROR: Health issues, no.

9 THE COURT: The days are good?

10 PROSPECTIVE JUROR: They're never good.

11 THE COURT: Fair enough.

12 But you can be here, no plane tickets?

13 PROSPECTIVE JUROR: I'm not leaving the
14 country.

15 THE COURT: Are you in a position if you
16 don't work, you don't get paid?

17 PROSPECTIVE JUROR: No.

18 THE COURT: I appreciate it's inconvenient
19 for everyone. If I let everybody go because it was
20 inconvenient, I would be talking to no one. We need to
21 do this process.

22 Victor Pizzuto, anything you need to tell
23 me?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Ms. Lopez?

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1 PROSPECTIVE JUROR: I don't think they pay me
2 for the week.

3 THE COURT: Keep your voice up. You don't
4 believe you get paid?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Where do you work?

7 PROSPECTIVE JUROR: For PC Home Health
8 Attendants.

9 PROSPECTIVE JUROR: My English.

10 THE COURT: You feel you have some issue with
11 English; is that what you are saying?

12 PROSPECTIVE JUROR: I try.

13 THE COURT: Thank you very much.

14 Ms. Norton, is there anything you need to
15 tell me?

16 PROSPECTIVE JUROR: I'm retired NYPD.

17 THE COURT: We'll get back to you on that.
18 The days are good?

19 PROSPECTIVE JUROR: It's as good as it's
20 gonna get.

21 THE COURT: Home health attendants don't get
22 paid.

23 MR. BERGER: Consent.

24 MR. PERRI: Consent.

25 THE COURT: Ms. Lopez, you are excused at

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1 this time.

2 PROSPECTIVE JUROR: Okay.

3 THE CLERK: Dana Kidderman,
4 K-I-D-D-E-R-M-A-N, seat number thirteen.

5 THE COURT: Welcome. Is there anything you
6 need to tell me?

7 PROSPECTIVE JUROR: I don't think so.

8 THE COURT: Let me move on to the next set of
9 questions. The next thing I need to know and you will
10 raise your hand. Have you or a person close to you
11 ever been the victim of a crime or a witness to a
12 crime? That could be family members, friends,
13 coworkers, yourselves, victim of a crime, or witnessed
14 a crime. Please raise your hand if that is your
15 situation. Keep the hands up for me, please. You may
16 put your hands down.

17 The first hand I saw was Ms. McNamara.

18 PROSPECTIVE JUROR: My sister is a police
19 officer in the 115 Precinct, NYPD. She has witnessed
20 many, many, many crimes.

21 THE COURT: Sir, is there anything about the
22 fact your sister is an NYPD officer and has witnessed
23 crimes going to get in the way of you sitting here as a
24 fair and impartial juror?

25 PROSPECTIVE JUROR: I would say I would have

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1 a hard time misbelieving a police officer's testimony.

2 THE COURT: Thank you for your honesty.

3 The next hand I saw was Mr. Morales. Yes,
4 sir?

5 PROSPECTIVE JUROR: I've been robbed before.

6 THE COURT: That robbery, did it occur here
7 in Nassau County?

8 PROSPECTIVE JUROR: Queens.

9 THE COURT: Did the police respond?

10 PROSPECTIVE JUROR: I didn't report it.

11 THE COURT: Is there anything about that
12 incident that makes you believe that you could not sit
13 here and be fair and impartial?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Do you understand that what
16 happened to you has nothing to do with what we're going
17 to do in this courtroom in this case?

18 PROSPECTIVE JUROR: I think this is a
19 different type of case.

20 THE COURT: Fair enough. Do you have any
21 feelings about the fact that you weren't going to
22 report what happened to you? Are those feelings going
23 to get in the way of you being fair and impartial here?

24 PROSPECTIVE JUROR: I don't think so.

25 THE COURT: I had a couple of people say I

1 don't think so to a few different answers, or I'm going
2 to try a few different answers. Let me put it out
3 there. There is no right or wrong answers here. We
4 need as much honesty as we can get from all of you.
5 When you say, I will try, or I think so, it makes us
6 nervous.

7 Let me give you an example of why it makes us
8 nervous. On that bucket list you put skydiving, and
9 you finally get up the courage and you go skydiving one
10 day, and do all of the preliminaries on the ground and
11 now it's time you are going up in the plane and with
12 the instructor, and the instructor says to you up in
13 the plane at 50,000 feet, however high you go, I have
14 no idea. He said, the last thing we need to do is
15 check each other's packs. Once we know each other's
16 packs are good to go, we'll jump out of the plane. The
17 instructor says, you go first. You look at the
18 instructor's pack, and you are like, tugging on the
19 strings and making sure everything is good to go and
20 you turn him around, thumbs up, you are good to go. I
21 know, I looked at your pack, everything is great.

22 Then the instructor now, I'll check it out,
23 you try to see if the straps -- I will try and see if
24 this is all right, and then he turns around. I think
25 you are okay. Are you jumping out of that plane? No

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1 way, right? That's kind of the anxious we all get in
2 the courtroom, when we, people, use words like try or,
3 I believe, those kinds of words. We just need a little
4 bit more of an assurance.

5 Again, there is no right or wrong answers.
6 We need something more of an assurance, whether
7 positive or negative, when you give us answers.

8 Mr. Morales, when you say things like, I will
9 try, it makes us nervous.

10 PROSPECTIVE JUROR: The defendant did nothing
11 to me, so I think I would be able to. Yes.

12 THE COURT: You will be able to listen to my
13 instructions?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: I know it's hard. You will be
16 able to listen to my instructions?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Will you follow the law whether
19 you like it or not?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: You will listen to the witnesses
22 who will come in and testify?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: You will evaluate whether or not
25 they are telling the truth?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: You will make a determination as
3 to whether the People have met their burden of proof?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: You will do that all fairly and
6 impartially?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Good to go. The next hand I
9 believe I saw was Westbrooke. Were you a victim of a
10 crime?

11 PROSPECTIVE JUROR: My daughter was a victim.

12 THE COURT: How long ago?

13 PROSPECTIVE JUROR: Many years ago. A young
14 child.

15 THE COURT: In Nassau County?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Were the police called for that
18 situation?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Were you satisfied with how that
21 situation was handled?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Is there anything about the fact
24 your daughter was a victim of a crime many years ago
25 going to get in the way of your ability to be fair and

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1 impartial in this matter?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Ms. Westbrooke, over the lunch
4 break you were supposed to check with your employer.
5 You said to me at one point, if I didn't work, I didn't
6 get paid.

7 PROSPECTIVE JUROR: I'm self-employed.

8 THE COURT: Is that going to be a problem as
9 a self-employed individual given the hours I told you
10 that you would be in the courtroom?

11 PROSPECTIVE JUROR: It depends on how long
12 it's going to take. I mean, you gave me the tests
13 dates. I considered them. I would like finally to get
14 it over with because I don't want them to call me
15 again.

16 THE COURT: I appreciate your honesty. The
17 next hand with regards to this question was
18 Ms. Kallenberg.

19 PROSPECTIVE JUROR: My home was robbed in
20 Nassau County.

21 THE COURT: How long ago, ma'am?

22 PROSPECTIVE JUROR: About fifteen years ago.

23 THE COURT: Were the police called?

24 PROSPECTIVE JUROR: Yes, they were.

25 THE COURT: Were you satisfied with how they

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1 handled the situation?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Was somebody caught?

4 PROSPECTIVE JUROR: No.

5 THE COURT: You did not have to go to court?

6 PROSPECTIVE JUROR: Did not have to go to
7 court.

8 THE COURT: Is there anything about that
9 matter, that fifteen years your house was burglarized,
10 anything about that that makes you believe you could
11 not be fair and impartial in this case?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: Did I miss any hands on that?
14 Yes, ma'am, Ms. Norton.

15 PROSPECTIVE JUROR: I never thought it would
16 have. When I was a child our house was robbed two
17 times. Once we were on vacation, and once I was away
18 in college. Nobody got hurt. Nobody was home. I
19 don't know if the police were called. I don't
20 remember. I have no idea. Nobody was caught. My
21 parents are pretty sure they know who it was. I don't
22 see how that would have any bearing. I just wanted to
23 say, I don't want to lie by emotions or whatever it is.

24 THE COURT: Thank you very much. It was long
25 ago and it's not harping in your mind?

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1 PROSPECTIVE JUROR: That's something I don't
2 even think about.

3 THE COURT: The next question I have for all
4 of you up front, has anyone close to you or yourself,
5 and close to you could be a friend, a family member,
6 ever convicted of a crime themselves, or a friend?
7 Keep your hands up for me, please.

8 I believe, Ms. Campbell. Yes, ma'am.

9 PROSPECTIVE JUROR: A family member. I have
10 a brother incarcerated many years ago.

11 THE COURT: What's the crime?

12 PROSPECTIVE JUROR: I don't know, several.

13 THE COURT: Was that here in Nassau County?

14 PROSPECTIVE JUROR: No, that wasn't here
15 though. Not here in this county or state.

16 THE COURT: Did you attend any of the
17 proceedings?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Do you feel that your brother was
20 treated fairly in those actions?

21 PROSPECTIVE JUROR: I guess. He's a
22 mischievous person all of his life. I can't discount
23 if his behavior warranted a conviction.

24 THE COURT: Is there anything about the fact
25 that your brother has been incarcerated and convicted,

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1 is there anything about that that is going to get in
2 the way of you being a fair and impartial juror in this
3 case if you are chosen?

4 PROSPECTIVE JUROR: No, no way.

5 THE COURT: Thank you. I appreciate you
6 letting us know.

7 PROSPECTIVE JUROR: You said convicted, a few
8 friends.

9 THE COURT: Those friends who have been
10 convicted, was that here in Nassau County?

11 PROSPECTIVE JUROR: Yes, Queens.

12 THE COURT: Did you attend any of the
13 proceedings?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Were you a witness for them in
16 any of the proceedings?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Do you feel they were treated
19 fairly by both the defense and the prosecution and the
20 police?

21 PROSPECTIVE JUROR: I wasn't there.

22 THE COURT: Is there anything about that fact
23 that you have friends who were convicted, going to get
24 in the way of you being fair and impartial in this
25 case?

Proceedings

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1 PROSPECTIVE JUROR: No.

2 THE COURT: Thank you very much.

3 Mr. Garrett, yes, sir.

4 PROSPECTIVE JUROR: Both parents.

5 THE COURT: Here in Nassau County?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Did you attend any of the
8 proceedings?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Were you a witness for anything?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Do you feel they were treated
13 fairly?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Is there anything about the fact
16 you have family that has been convicted going to get in
17 the way of you being fair and impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Mr. Garrett, I wanted to let you
20 know when you call your employer, I know it's not a
21 lot, you get \$40 a day to sit as a juror, just so you
22 know. I don't know if that helps you at all.

23 The next hand, Ms. Woodhouse. Yes, ma'am.

24 PROSPECTIVE JUROR: My brother and my two
25 brothers-in-law.

Proceedings

274

1 THE COURT: Have been convicted?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Here in Nassau County?

4 PROSPECTIVE JUROR: No, one in upstate New
5 York and one in California.

6 THE COURT: How long ago?

7 PROSPECTIVE JUROR: Close to twenty-five
8 years now.

9 THE COURT: Were you part of any of the
10 proceedings?

11 PROSPECTIVE JUROR: No, not at all.

12 THE COURT: Do you feel they were treated
13 fairly, if you know?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Do you have ill feelings towards
16 either the defense, or the prosecution, or the court
17 system because they were convicted?

18 PROSPECTIVE JUROR: None at all.

19 THE COURT: Will anything get in the way of
20 being fair and impartial?

21 PROSPECTIVE JUROR: None at all.

22 THE COURT: I believe it is Ms. Kallenberg.

23 PROSPECTIVE JUROR: I have three cousins who
24 were convicted.

25 THE COURT: Here in Nassau County?

Proceedings

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1 PROSPECTIVE JUROR: No, in the city and down
2 south.

3 THE COURT: How recently?

4 PROSPECTIVE JUROR: Off and on for the last
5 ten years.

6 THE COURT: Were you a part of any of the
7 proceedings?

8 PROSPECTIVE JUROR: Not at all.

9 THE COURT: Is there anything about that that
10 gives you ill feelings towards the defense, the
11 prosecution, or the Court?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Will it get in the way of you
14 being fair and impartial?

15 PROSPECTIVE JUROR: No, it shouldn't. It
16 will not.

17 THE COURT: When you say, it shouldn't,
18 that's okay if that's your feeling, and I don't want
19 you to run away from that. I want to get a better
20 answer. There is no better answer. You are saying to
21 me, it will not get in the way?

22 PROSPECTIVE JUROR: It will not get in the
23 way.

24 THE COURT: Ms. Kidderman.

25 PROSPECTIVE JUROR: My father.

Proceedings

276

1 THE COURT: Here in Nassau County?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: How recently?

4 PROSPECTIVE JUROR: 1994.

5 THE COURT: Were you part of the proceeding?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Do you feel he was treated
8 fairly?

9 PROSPECTIVE JUROR: Yes and no.

10 THE COURT: What is the no part and what is
11 the yes part?

12 PROSPECTIVE JUROR: It involved a friend. I
13 think, in general, the type of case it was, is this
14 type of case and I don't --

15 THE COURT: Not from you?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: Thank you for letting us know.

18 The type of case it is makes her not a good
19 juror for this.

20 MR. BERGER: Okay.

21 THE COURT: I saw Ms. Norton's hand.

22 PROSPECTIVE JUROR: Same exact.

23 THE COURT: You feel this case is not for you
24 because of that?

25 PROSPECTIVE JUROR: Please.

Proceedings

277

1 THE COURT: Fair enough.

2 I'm sorry.

3 PROSPECTIVE JUROR: Family members will not
4 affect me cause.

5 THE COURT: Yes, family members.

6 PROSPECTIVE JUROR: No, it will not.

7 THE COURT: Affect you here in Nassau County?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: How long ago?

10 PROSPECTIVE JUROR: Ten years ago.

11 THE COURT: Step up. Off the record.

12 (Whereupon, there was an off-the-record
13 discussion at the bench.)

14 (Whereupon, there was a sidebar discussion
15 with the Court, counsel and prospective juror number
16 eleven.)

17 THE COURT: We're concerned about a couple of
18 things, one, your financial situation, and two, you had
19 mentioned your daughter was a victim.

20 PROSPECTIVE JUROR: Sexual assault.

21 THE COURT: Is this going to be the case for
22 you? Are you going to be able to separate what
23 happened to her?

24 PROSPECTIVE JUROR: Yes, I can.

25 THE COURT: I don't want to keep you if your

1 mind isn't going to be with us. I don't want to get
2 rid of you just to get rid of you. Do you want to sit
3 on the jury right now?

4 PROSPECTIVE JUROR: I can sit on the jury.

5 MR. BERGER: You said your daughter was a
6 victim of sexual assault?

7 PROSPECTIVE JUROR: By her cousin who was
8 also a child.

9 MR. BERGER: This is a situation which a
10 six-year old is claiming to be a victim by this
11 defendant.

12 PROSPECTIVE JUROR: I understand that.

13 MR. BERGER: It wouldn't affect you at all?

14 PROSPECTIVE JUROR: You want me to go by the
15 law and what is presented in front of me. I understand
16 the difference between it.

17 MR. BERGER: I know you understand. You are
18 smart enough to understand. There are lot of people
19 that understand and emotionally get affected by it.

20 PROSPECTIVE JUROR: I understand I have to
21 detach. You have to look at the law. I understand.
22 It was a family member and another family member. She
23 was three. He was ten.

24 THE COURT: Thank you for coming up. We'll
25 keep you then.

1 (Whereupon, the proceedings resumed.)

2 THE COURT: The following individuals are
3 excused from this case with the thanks of the Court.
4 Probably a different case is better for all of you.

5 Mr. McNamara, Ms. Kidderman, and Mr. Norman.
6 Thank you to the three of you.

7 Let's refill the seats.

8 THE CLERK: John Sethna, S-E-T-H-N-A, seat
9 number three.

10 Barry W. Brown, B-R-O-W-N, seat number
11 thirteen.

12 Brian Lutwick, L-U-T-W-I-C-K, seat number
13 fourteen.

14 THE COURT: Welcome to the front of the
15 courtroom, those of you who just joined us.

16 Mr. Sethna, is there anything you need to
17 tell me?

18 PROSPECTIVE JUROR: I may not be appropriate
19 for this case. My wife was molested.

20 THE COURT: Let me ask you, sir, do you feel
21 you would be -- do you believe that you would be able
22 to put that aside and decide this case just based on
23 what is happening here, or do you feel too close?

24 PROSPECTIVE JUROR: I would be more
25 appropriate for a murder case or something like that.

1 THE COURT: Fair enough. Not many people say
2 that. I don't have a bias against that. Fair enough.
3 Very good.

4 Next person. Mr. Brown.

5 PROSPECTIVE JUROR: I had a family member who
6 was taken advantage of by a doctor.

7 THE COURT: Was that here in Nassau County?

8 PROSPECTIVE JUROR: Yes, it was.

9 THE COURT: Was there an arrest?

10 PROSPECTIVE JUROR: No, but the cops knew
11 about it.

12 THE COURT: Is it still being investigated?

13 PROSPECTIVE JUROR: It might be. They came
14 back years later to my family, my cousin's family and
15 they came to investigate another person that reported
16 it, and when we -- when my cousin reported it they
17 didn't do anything about it.

18 THE COURT: Is there anything about that fact
19 that makes you believe that it's going to get in the
20 way of you being fair and impartial here?

21 PROSPECTIVE JUROR: It could.

22 THE COURT: Thank you, Mr. Brown. I
23 appreciate your honesty.

24 Mr. Lutwick, is there anything you need to
25 tell me?

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1 PROSPECTIVE JUROR: No.

2 THE COURT: Consent to the two individuals,
3 Sethna. We will try to find you a murder trial, and
4 Mr. Brown, thank you for your being here today.

5 THE CLERK: Jonathan O'Campo, O-C-A-M-P-O.
6 Seats number three.

7 Gina Maccio, M-A-C-C-I-O, seat number
8 thirteen.

9 THE COURT: Welcome to those of you just
10 joined. Mr. O'Campo, is there anything you need to
11 tell me?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Ms. Maccio?

14 PROSPECTIVE JUROR: I'm actually a college
15 student. I have finals.

16 THE COURT: On consent?

17 MR. PERRI: Yes, your Honor.

18 MR. BERGER: Yes.

19 THE COURT: Good luck.

20 MR. BERGER: Another hand.

21 THE COURT: Ms. Woodhouse.

22 PROSPECTIVE JUROR: I've been sitting here
23 and reflecting. It's facilitating, I taught a
24 multi-cultural program very, very close, and there was
25 a situation that I believe was very much like this

1 trial.

2 THE COURT: Is that going to get in the way
3 of you sitting?

4 PROSPECTIVE JUROR: Yes. It was devastating
5 to the program and students involved.

6 THE COURT: Thank you, Ms. Woodhouse for
7 letting us know that.

8 On consent?

9 MR. PERRI: Yes, your Honor.

10 MR. BERGER: Yes.

11 THE CLERK: Seat number nine, Vilma
12 Hernandez, H-E-R-N-A-N-D-E-Z. Please take a seat.
13 First name was V-I-L-M-A.

14 Heather Manikas, M-A-N-I-K-A-S, seat number
15 thirteen.

16 THE COURT: Welcome to the front of the
17 courtroom, Ms. Hernandez and is Manikas.

18 Ms. Hernandez, is there anything you need to
19 tell me?

20 PROSPECTIVE JUROR: I have a sick mom. I
21 have a sick mom, and I have appointments with her. I
22 must take her. She has dementia, diabetes, back
23 problems.

24 THE COURT: You are her caregiver?

25 PROSPECTIVE JUROR: Yes.

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1 THE COURT: Ms. Manikas.

2 MR. BERGER: Consent.

3 THE COURT: Ms. Manikas.

4 PROSPECTIVE JUROR: One of my close friends
5 was molested as a child.

6 THE COURT: Is there anything about that fact
7 that makes you believe that you can't be fair and
8 impartial in this case?

9 PROSPECTIVE JUROR: I think it would be
10 difficult.

11 THE COURT: Fair enough. Consent on both?

12 MR. PERRI: Yes.

13 MR. BERGER: Yes.

14 THE COURT: We'll try to file the two seats
15 before we break for lunch.

16 THE CLERK: Sandra Healy, H-E-A-L-Y, seat
17 number nine.

18 Ann Crisci, C-R-I-S-C-I, seat number
19 thirteen.

20 THE COURT: Welcome, Ms. Healy and
21 Ms. Crisci.

22 Ms. Healy, is there anything you need to tell
23 me?

24 PROSPECTIVE JUROR: I work part time at
25 school. If I don't work, I don't get paid.

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1 THE COURT: Ms. Crisci.

2 PROSPECTIVE JUROR: I have been diagnosed
3 with IBS, and it does play havoc sometimes with --

4 THE COURT: Understood.

5 MR. BERGER: Consent.

6 THE COURT: We now have two hot seats. We'll
7 give it a couple more. You are excused.

8 THE CLERK: Iris J. Maldonado,
9 M-A-L-D-O-N-A-D-O, seat number nine.

10 Shirley Borden, B-O-R-D-E-N, seat number
11 thirteen.

12 THE COURT: Welcome. Ms. Maldonado, is there
13 anything you need to tell me?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Ms. Borden, anything you need to
16 tell me?

17 PROSPECTIVE JUROR: I suffer from mold. I
18 lived in a house with mold and I am hypersensitive to
19 it. As long as the courtroom doesn't have fungus or
20 stain ceiling tiles, anything like that.

21 THE COURT: How are you feeling so far?

22 PROSPECTIVE JUROR: Hot. Headaches, but you
23 know.

24 THE COURT: No reaction?

25 PROSPECTIVE JUROR: Not in this room, no.

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1 THE COURT: This is the room you are in. If
2 you had no reaction, I'm going to go on the theory you
3 are good. You have been sitting in here well over an
4 hour.

5 PROSPECTIVE JUROR: One other thing, I
6 cleaned up the scene of an attempted murder. It wasn't
7 in Nassau County. It was about ten years ago.

8 THE COURT: Is that part of your employment?

9 PROSPECTIVE JUROR: No, no.

10 THE COURT: It was a family member. Somebody
11 tried to -- with regards to that, is there anything
12 about that fact that is going to get in the way of you
13 being fair and impartial here? Obviously, this is not
14 a murder case. That, I imagine, was pretty traumatic.

15 PROSPECTIVE JUROR: It stemmed from something
16 sexual.

17 THE COURT: Do you feel this is a case for
18 you?

19 PROSPECTIVE JUROR: I could be impartial.

20 THE COURT: You can be impartial?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: I will leave you there for now.
23 I'm sure there will be questions for you after lunch.

24 Ms. Hayes.

25 PROSPECTIVE JUROR: Because I'm required to

1 report cases like this, I'm not sure whether I could be
2 impartial or --

3 THE COURT: You are a mandatory reporter?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: We're going to note that and have
6 you come back after lunch, and I'm sure we'll laugh
7 more questions for you. It's getting late. I want
8 everyone to have sufficient time to grab something to
9 eat. Let me give you all some admonitions as you walk
10 out of here for the lunch hour.

11 I need you all report back with wherever the
12 officers tell you to around 2:00 with the hope that we
13 will be back in this courtroom no later than 2:15. I
14 can't start unless you are all here as close to 2:00 as
15 you can. Be back here with the thought you will be
16 back in the room at 2:15. When you leave here, please,
17 you don't know much about what is going on. I have to
18 tell you to keep an open mind. You don't know
19 anything. Be willing to continue to listen when you
20 come back into the courtroom.

21 Don't discuss the case amongst yourselves or
22 with anyone else. Don't permit anyone to discuss the
23 case in your presence. Over the lunch break do not
24 talk to the lawyers, or the defendant, or anyone else
25 about this case and just so you know, if you run into

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1 any of us while out grabbing lunch, we'll ignore you.
2 Don't take it personally. Don't visit. You don't even
3 know where that is. Yes, there's nothing you need to
4 worry about. Don't get on the Internet and try to
5 start looking up what you want to know about this case.
6 That's not allowed. The evidence has to come from the
7 courtroom, not from Google. See you all at 2:00.
8 Thank you.

9 (Whereupon, the jury panel exited the
10 courtroom.)

11 THE COURT: Anything for the record before we
12 break for lunch?

13 MR. PERRI: No, your Honor.

14 THE COURT: If you could all be back for
15 2:15. I told them two in the hopes we'll be able to
16 start at 2:15.

17 MR. PERRI: Yes, your Honor.

18 THE COURT: We can't bring your clients up
19 unless you are here. Can you come back between five
20 and ten after two.

21 (Whereupon, a luncheon recess was taken.)

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THE CLERK: Case on trial continued,
Indictment Number 742N of 2014, People of the State of
New York vs. Daniel Ramos.

Let the record reflect all parties are
present. The jury is not present at this time.

People ready?

MR. PERRI: Yes, your Honor.

MR. BERGER: Yes, your Honor.

THE COURT: Anything for the record before we
seat the jurors?

MR. BERGER: I ask you to accord me about a
half hour on the first group. You will notice the
second time I was much shorter, twenty minutes or so.
It's a brand new panel. I ask the Court to consider
the seriousness of the case.

THE COURT: I understand. I'm not up to you
asking questions yet. I have a few I have to do. I
didn't cut you off yesterday. I want you to keep it
moving along. That's all. Step up.

(Whereupon, there was an off-the-record
discussion at the bench.)

THE COURT: I had a conference with the

1 attorneys and they have agreed to substitute
2 Ms. Jergensen, juror number eight, with another juror.

3 MR. BERGER: Yes.

4 MR. PERRI: Yes, your Honor.

5 THE CLERK: Do both sides stipulate all
6 jurors are properly seated?

7 MR. PERRI: Yes.

8 MR. BERGER: Yes.

9 THE COURT: Before we get started with the
10 afternoon session, I know we had a couple of things
11 hanging out there at the lunch break.

12 Mr. Garrett, did you have an opportunity to
13 call your employer?

14 PROSPECTIVE JUROR: Yes. I will not get
15 paid.

16 THE COURT: All right. Ms. Hayes, you had
17 just started to tell us you're a mandatory reporter.

18 PROSPECTIVE JUROR: Yes.

19 I'm a registered nurse.

20 THE COURT: What do you do for a living?

21 PROSPECTIVE JUROR: Registered nurse.

22 THE COURT: Will that get in the way of you
23 being fair and impartial?

24 PROSPECTIVE JUROR: Absolutely.

25 THE COURT: With the consent of the

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1 attorneys, we'll replace seats six and seven.

2 MR. PERRI: Yes.

3 MR. BERGER: Yes.

4 THE COURT: Thank you, Mr. Garret for
5 checking in. Thank you, Ms. Hayes, for letting us
6 know.

7 THE CLERK: Teddy Fried, F-R-I-E-D, seat
8 number six.

9 Doris Kason, K-A-S-O-N, seat number seven.

10 THE COURT: Welcome, Mr. Fried and Ms. Kason.
11 Is there anything you need to tell me?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: Ms. Kason?

14 PROSPECTIVE JUROR: I'm a real estate agent.
15 I don't get paid unless I work. This time of year I
16 work close to seven days a week.

17 THE COURT: Consent?

18 MR. PERRI: Yes.

19 THE COURT: Thank you.

20 THE CLERK: Steven Collins. Steven with a V,
21 C-O-L-L-I-N-S. Seat number seven.

22 THE COURT: Welcome, Mr. Collins. Is there
23 anything you need to tell me?

24 PROSPECTIVE JUROR: My job, I don't get paid.

25 THE COURT: What do you do?

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1 PROSPECTIVE JUROR: Salesman.

2 THE COURT: Consent?

3 MR. PERRI: Yes.

4 MR. BERGER: Yes.

5 THE CLERK: You may step out. You can return
6 to central jury. Hand that in across the street where
7 you first started this morning.

8 Gisela Fabian. First name spelled
9 G-I-S-E-L-A. Last name spelled F-A-B-I-A-N, seat
10 number seven.

11 THE COURT: Welcome.

12 PROSPECTIVE JUROR: Hello.

13 THE COURT: Is there anything you need to
14 tell me?

15 PROSPECTIVE JUROR: I don't speak English.
16 Sorry.

17 THE COURT: Language, People?

18 MR. PERRI: Yes, your Honor.

19 MR. BERGER: Thank you.

20 THE CLERK: Christopher Soltana. Nobody
21 appeared.

22 Christine Cavallaro, spelled
23 C-A-V-A-L-L-A-R-O. Christine spelled with a C.

24 THE COURT: Welcome, Ms. Cavallaro. Is there
25 anything you need to tell me?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Thank you very much. I will go
3 on to the next set of questions I have for all of you
4 in the front of the courtroom.

5 I need to know if you or anyone close to you,
6 be it a friend or family member, have any pending
7 criminal or civil cases, open cases, lawsuits, charges,
8 raise your hand if that's your situation. No hands
9 have been raised.

10 You heard a little bit about the nature of
11 the charges here, and you heard people talk about they
12 didn't think this case would be good for them based on
13 the charges. I need to know, is there anyone sitting
14 in the jury box now, other than it being uncomfortable.
15 Every trial has a level of uncomfortableness attached
16 to it. Is there some reason you have not brought up
17 that based on the nature of the charges that would
18 prevent you from being fair and impartial in this
19 matter? Raise your hand if that's your situation.

20 Let the record reflect no hands have been
21 raised.

22 You heard there are police officers
23 potentially testifying in this case, or at the very
24 least, you will hear about some of their actions. As
25 you know, under our law, a police officer is no more or

1 less believable solely and simply because he or she is
2 a police officer. I need to know if there is anyone
3 sitting here now who believes they cannot fairly
4 evaluate a police officer's testimony for truthfulness
5 and accuracy just as you would the testimony of
6 somebody else? That means if you are sitting there,
7 going, if he's a cop, he must be telling the truth. Or
8 the opposite, if he's a cop, he must be lying. Is
9 there anybody sitting there thinking one of those two
10 ways? Now would be the time to raise your hand and let
11 us know.

12 PROSPECTIVE JUROR: Could I tell you one
13 thing? I worked at Nassau County jail for nine years,
14 and I also now I work in the hospital, Nassau
15 University Medical Center. Would that make a
16 difference?

17 MR. BERGER: I didn't hear.

18 THE COURT: She's worked at the jail for
19 approximately nine years. She is currently employed at
20 the Nassau County Medical Center. She asked if it
21 would make a difference. It only makes a difference if
22 you believe that your background makes you not capable
23 of being fair and impartial in this matter. There's
24 absolutely nothing in that case that says you can't
25 sit. Could you be fair and impartial?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you for letting us know.

3 The next thing I need to tell you jurors, you
4 are not allowed to visit or view the place where the
5 crime charged was allegedly committed. Now, in this
6 case, that location is 124 Park Avenue in Roosevelt,
7 New York. Is there anybody sitting here in the front
8 of the courtroom who knows they must drive by that
9 location, whether it's to go back and forth to home,
10 back and forth to work, or you are the type of person
11 that once you are told, don't go there, you will be
12 there at the end of the day. Raise your hand if you
13 have any of those situations.

14 Ms. Kallenberg.

15 PROSPECTIVE JUROR: I work for Roosevelt
16 School District. I don't go by there.

17 THE COURT: Fair enough.

18 Mr. Lutwick.

19 PROSPECTIVE JUROR: I coach one day a week in
20 Roosevelt. I don't know if I pass Park Avenue.

21 THE COURT: The good news is you obviously
22 never paid attention to a street called Park Avenue.
23 Don't start now. Fair enough?

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Does anybody in the front have a

1 religious belief that would prevent you from sitting in
2 judgment of a person and voting guilty or not guilty,
3 any religious beliefs?

4 Let the record reflect no hands have been
5 raised.

6 Next I need to know, has anyone ever served
7 on either a criminal jury before, a civil jury before,
8 or a grand jury? Raise your hand if you have prior
9 jury service. Keep those hands up for me, please. All
10 right, you can put your hands down.

11 Mr. Morales, civil, criminal, or grand jury?

12 PROSPECTIVE JUROR: Civil.

13 THE COURT: Here in Nassau County?

14 PROSPECTIVE JUROR: Sutphin Boulevard,
15 Queens.

16 THE COURT: How long ago, sir?

17 PROSPECTIVE JUROR: Long time ago.

18 THE COURT: Without telling us what the
19 verdict was, did you reach a verdict, or did it settle?

20 PROSPECTIVE JUROR: It settled.

21 THE COURT: Is there anything about that
22 experience that is going to get in the way of you
23 listening to my instructions, following the rules of
24 law, as I give them to you in evaluating testimony in
25 this case?

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1 PROSPECTIVE JUROR: No.

2 THE COURT: Thank you very much,
3 Ms. Cavallaro.

4 PROSPECTIVE JUROR: Grand jury.

5 THE COURT: Here in Nassau County?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: How long ago?

8 PROSPECTIVE JUROR: It has to be more than
9 eight years, ten years, maybe.

10 THE COURT: Do you appreciate that the burden
11 of proof and the rules of law for a grand jury are very
12 different than for a trial; do you understand that?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: And will you be able to follow
15 the rules that I give you, even if you remember
16 something different from your grand jury days? Can you
17 follow my instructions?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Thank you for letting me know.

20 And lastly, before I go to each of you for
21 some limited information, I need to know if you have
22 not already told me. Is anyone here that has friends,
23 family members, that are involved in law enforcement?
24 What I'm talking about is law enforcement, not just
25 police officers, but the sheriff's department, NYPD,

1 attorneys, court staff, maybe you know people that
2 worked in the sheriff's department, any sort of law
3 enforcement, or attorney background, the attorney
4 general's office would be included. Raise your hand if
5 you are in that situation, friends or family members.
6 Keep the hands up.

7 Ms. Norton.

8 PROSPECTIVE JUROR: A childhood friend. I'm
9 still best friends, her husband is a State Trooper, but
10 on highway patrol. I don't think there is any bearing.
11 And an ex-boyfriend, twelve years ago is in the
12 sheriff's department in South Carolina. Again, in the
13 highway patrol. It has nothing to do with this.

14 THE COURT: Thank you very much. From what
15 I'm hearing, it wouldn't get in the way of you being
16 fair and impartial?

17 PROSPECTIVE JUROR: Not at all.

18 THE COURT: Ms. Campbell?

19 PROSPECTIVE JUROR: My daughter or
20 stepdaughter is an FBI agent. She works not in FBI,
21 under security.

22 THE COURT: Security details?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Do you speak to her often about
25 her work?

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1 PROSPECTIVE JUROR: No. I know she is there.

2 THE COURT: Will you be able to avoid the
3 temptation of potentially calling her up after a long
4 day in court, say let me tell you what is going on?

5 PROSPECTIVE JUROR: Our relationship is
6 estranged.

7 THE COURT: Fair enough. It wouldn't get in
8 the way, correct?

9 PROSPECTIVE JUROR: Correct.

10 THE COURT: Thank you so much.

11 Mr. Morales, yes, sir.

12 PROSPECTIVE JUROR: A few friends in NYPD and
13 you are referring to attorneys too?

14 THE COURT: Yes.

15 PROSPECTIVE JUROR: My brother and
16 sister-in-law are lawyers.

17 THE COURT: Your brother and sister-in-law
18 who are lawyers, are these lawyers in Nassau County?

19 PROSPECTIVE JUROR: New York.

20 THE COURT: New York City?

21 PROSPECTIVE JUROR: New York City.

22 THE COURT: Your friends who are on the NYPD,
23 how often do you speak with them?

24 PROSPECTIVE JUROR: It depends, Memorial Day,
25 July 4th, BBQ.

1 THE COURT: Will you be able to give me an
2 assurance that you wouldn't call them up and start
3 asking them questions about this case if you are picked
4 as a juror?

5 PROSPECTIVE JUROR: Ask that question again.

6 THE COURT: Can you give me an assurance that
7 you will not call them up?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Is it going to get in the way of
10 you being fair and impartial?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you.

13 The next hand, Ms. Cavallaro, we understand
14 your relationship with everybody.

15 Ms. Westbrooke.

16 PROSPECTIVE JUROR: I didn't know if it
17 applies. My mother passed, but was director of
18 personnel services, director or nursing personnel
19 services.

20 THE COURT: What county?

21 PROSPECTIVE JUROR: New York City.

22 THE COURT: Is there anything about that that
23 gets in the way of you being fair and impartial?

24 PROSPECTIVE JUROR: No. My former husband
25 was retired from the Department of Criminal Justice as

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1 a file clerk, and my best friend's daughter is an
2 attorney, but in Philadelphia.

3 THE COURT: Same question to you, as I put to
4 everyone else. Can you avoid calling the people up and
5 saying, hey, this is what is going on, I need advice?

6 PROSPECTIVE JUROR: Yes, I can. No problem.
7 I wouldn't do that.

8 THE COURT: Thank you for letting me know.
9 Ms. Kallenberg.

10 PROSPECTIVE JUROR: My uncle is a retired New
11 York City Police Officer.

12 THE COURT: Same questions for you, is it
13 going to get in the way?

14 PROSPECTIVE JUROR: Not at all.

15 THE COURT: You will avoid calling him?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Mrs. Gordon?

18 PROSPECTIVE JUROR: My cousin teaches,
19 paralegal at Berkeley and Post LIU.

20 THE COURT: Same questions.

21 PROSPECTIVE JUROR: No problem.

22 THE COURT: Mr. Lutwick.

23 PROSPECTIVE JUROR: A number of family
24 members on my wife's side are cops, military, firemen.

25 THE COURT: Same questions for you.

1 PROSPECTIVE JUROR: Yeah, a number of my
2 friends are attorneys.

3 THE COURT: If I give you the law in this
4 case, and you either don't like it or don't quite
5 understand it, can you give me assurance you will not
6 ask them to explain it to you, but you will follow the
7 rules of the court system and get the Court to explain
8 it?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: I'll start with juror number one.
11 A few more questions for each of you and then the
12 attorneys will stand up and talk with you.

13 Ms. Kennedy, what town do you reside in?

14 PROSPECTIVE JUROR: Carle Place.

15 THE COURT: How long?

16 PROSPECTIVE JUROR: Four years.

17 THE COURT: Where were you before that?

18 PROSPECTIVE JUROR: Port Washington.

19 THE COURT: How long there?

20 PROSPECTIVE JUROR: About five years.

21 THE COURT: Up to nine. Where were you
22 before that?

23 PROSPECTIVE JUROR: Manhasset.

24 THE COURT: How long there?

25 PROSPECTIVE JUROR: Since I was ten.

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1 THE COURT: Fair enough. Highest grade you
2 completed in school?

3 PROSPECTIVE JUROR: Master.

4 THE COURT: In what?

5 PROSPECTIVE JUROR: Education.

6 THE COURT: Do you work?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What is it that you do?

9 PROSPECTIVE JUROR: Teacher.

10 THE COURT: Are you married?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What does your spouse do?

13 PROSPECTIVE JUROR: Teacher also.

14 THE COURT: Any children?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: How many?

17 PROSPECTIVE JUROR: Two.

18 THE COURT: Grown or school age?

19 PROSPECTIVE JUROR: School age.

20 THE COURT: How do you like to spend your
21 spare time?

22 PROSPECTIVE JUROR: With the kids, family.

23 THE COURT: Are you on social media?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: When you woke up this morning

1 knowing you were coming to the Mineola courthouse, did
2 you put a pin dot --

3 PROSPECTIVE JUROR: I didn't.

4 THE COURT: Very good. Can you give me
5 assurance, and this will go for everyone, if you are on
6 social media, I need to know that you will not, during
7 the pendency of this case, post anything about being on
8 this jury. You can't discuss your fellow jurors. You
9 can't discuss the judge's hair color, nothing. You
10 can't put anything on social media. Can you give that
11 assurance?

12 Yes. Do you blog?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Is anyone a blogger? No blogging
15 here. Thank you, ma'am.

16 Ms. Norton, what town do you live in?

17 PROSPECTIVE JUROR: Westbury.

18 THE COURT: How long?

19 PROSPECTIVE JUROR: Since December of 1998.

20 THE COURT: What is your highest level of
21 school?

22 PROSPECTIVE JUROR: Two associate's, degree
23 and I'm currently enrolled to get my BSN in nursing.
24 I'm already a registered nurse.

25 THE COURT: Do you work?

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1 PROSPECTIVE JUROR: Yes, Forest Hills
2 Hospital.

3 THE COURT: Forest Hills Hospital?

4 PROSPECTIVE JUROR: For North Shore.

5 THE COURT: Are you married?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Does your suppose work?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What does he or she do?

10 PROSPECTIVE JUROR: Works in the same place..
11 He does everything but surgery. He cleans, moves
12 people around, gets things, nurse's assistant. I
13 guess, they call it that.

14 THE COURT: Do you have children?

15 PROSPECTIVE JUROR: No.

16 THE COURT: How do you like to spend your
17 spare time?

18 PROSPECTIVE JUROR: I read. I go shopping or
19 I talk with friends, or I spend a lot of time with
20 family, especially with nieces, single and not married
21 and young. Mostly family and friends.

22 THE COURT: Are you on social media?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Can you avoid it if you were
25 picked?

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1 PROSPECTIVE JUROR: I did already do it
2 today, but I wouldn't do it again.

3 THE COURT: I found my person who posted that
4 they were here. I can't have you doing that.

5 PROSPECTIVE JUROR: I wouldn't.

6 THE COURT: Mr. Campo, what town do you live
7 in?

8 PROSPECTIVE JUROR: Elmont.

9 THE COURT: How long?

10 PROSPECTIVE JUROR: Since I was four.

11 THE COURT: How long?

12 PROSPECTIVE JUROR: Since I was a child.

13 THE COURT: What is your highest level of
14 school?

15 PROSPECTIVE JUROR: Associate's.

16 THE COURT: In what?

17 PROSPECTIVE JUROR: Applied science.

18 THE COURT: Do you work?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: What do you do?

21 PROSPECTIVE JUROR: Restore automobiles.

22 THE COURT: Are you married?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Do you have a significant other?

25 PROSPECTIVE JUROR: Significant other.

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1 THE COURT: What does he or she do?

2 PROSPECTIVE JUROR: Stays home with the baby.

3 THE COURT: You have a child?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Just one?

6 PROSPECTIVE JUROR: Just one.

7 THE COURT: A little one?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: How do you like to spend your
10 spare time?

11 PROSPECTIVE JUROR: When I'm not working I
12 spend time with the family.

13 THE COURT: Do you go on social media?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Can you avoid it?

16 PROSPECTIVE JUROR: I do.

17 THE COURT: Ms. Campbell, what town?

18 PROSPECTIVE JUROR: Freeport.

19 THE COURT: For how long?

20 PROSPECTIVE JUROR: Since 1987.

21 THE COURT: Do you work?

22 PROSPECTIVE JUROR: Recently retired.

23 THE COURT: What did you do before you
24 retired, and congratulations?

25 PROSPECTIVE JUROR: Administrative teacher

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1 and supervisor of administration.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR: Widow.

4 THE COURT: Do you have any children?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: How many?

7 PROSPECTIVE JUROR: Three.

8 THE COURT: Grown or school age?

9 PROSPECTIVE JUROR: Grown.

10 THE COURT: What do they do?

11 PROSPECTIVE JUROR: Child develop, CDA

12 develop associates. One is a massage therapist

13 esthetician, and my son does train truck driving and

14 other laborer's work.

15 THE COURT: How do you like to spend your
16 spare time?

17 PROSPECTIVE JUROR: Socialite.

18 THE COURT: Are you on social media?

19 PROSPECTIVE JUROR: No, I'm not.

20 THE COURT: Forgive me, I'm having a slight
21 reaction up here.

22 Mr. Morales, what town?

23 PROSPECTIVE JUROR: Baldwin.

24 THE COURT: How long?

25 PROSPECTIVE JUROR: Seven years.

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1 THE COURT: Where were you above that?

2 PROSPECTIVE JUROR: East Rockaway.

3 THE COURT: How long?

4 PROSPECTIVE JUROR: Fourteen years.

5 THE COURT: Do you work?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR: Technical support

9 specialist.

10 THE COURT: What is your highest level of
11 school you completed?

12 PROSPECTIVE JUROR: High school and some
13 technical school.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you have a spouse?

17 PROSPECTIVE JUROR: Homemaker.

18 THE COURT: Hardest job in the world. Any
19 children?

20 PROSPECTIVE JUROR: Two.

21 THE COURT: Grown or school age?

22 PROSPECTIVE JUROR: Grown.

23 THE COURT: What do they do?

24 PROSPECTIVE JUROR: My son is currently
25 unemployed. My daughter is a manager at Wendy's.

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1 THE COURT: How do you like to spend your
2 spare time?

3 PROSPECTIVE JUROR: Working on my honey-do
4 list.

5 THE COURT: I do like the honey-do list. Are
6 you on social media?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Mr. Fried, where do you live?

9 PROSPECTIVE JUROR: North Woodmere.

10 THE COURT: For how long?

11 PROSPECTIVE JUROR: Six-and-a-half years.

12 THE COURT: Where were you before that?

13 PROSPECTIVE JUROR: Queens.

14 THE COURT: What is your highest level of
15 school?

16 PROSPECTIVE JUROR: Completed high school and
17 first year of college.

18 THE COURT: Do you work, sir?

19 PROSPECTIVE JUROR: Yes, self-employed.

20 THE COURT: Is it going to be a problem for
21 you to sit here?

22 PROSPECTIVE JUROR: Is it going to be a
23 problem?

24 THE COURT: If you are self-employed, will
25 you get paid?

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1 PROSPECTIVE JUROR: Yes, I'll get paid.

2 THE COURT: What are you self-employed in
3 doing?

4 PROSPECTIVE JUROR: I own a couple of dry
5 cleaners.

6 THE COURT: Are you married?

7 PROSPECTIVE JUROR: Yes, Judge.

8 THE COURT: What does your spouse do?

9 PROSPECTIVE JUROR: She is a New York City
10 school teacher.

11 THE COURT: Do you have any children?

12 PROSPECTIVE JUROR: Nursery child.

13 THE COURT: How do you like to spend your
14 spare time?

15 PROSPECTIVE JUROR: Working on my bucket
16 list.

17 THE COURT: Do you have skydiving on it?

18 PROSPECTIVE JUROR: No. That's a good idea.

19 THE COURT: Thank you very much.

20 Ms. Cavallaro, what town?

21 PROSPECTIVE JUROR: East Meadow.

22 THE COURT: For how long?

23 PROSPECTIVE JUROR: 1986.

24 THE COURT: What is your highest level of
25 school?

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1 PROSPECTIVE JUROR: Master's.

2 THE COURT: In?

3 PROSPECTIVE JUROR: Social work.

4 THE COURT: You are employed at the hospital
5 now?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR: Therapist.

9 THE COURT: Are you married?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Spouse?

12 PROSPECTIVE JUROR: Retired.

13 THE COURT: From what?

14 PROSPECTIVE JUROR: Works for the New York
15 Transit Authority.

16 THE COURT: Any children?

17 PROSPECTIVE JUROR: Two grown daughters.

18 THE COURT: What do they do?

19 PROSPECTIVE JUROR: One is a teacher. One
20 works for a law firm, paralegal.

21 THE COURT: What do you do in your spare
22 time?

23 PROSPECTIVE JUROR: Friends, going to
24 Manhattan.

25 THE COURT: Are you on social media?

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1 PROSPECTIVE JUROR: No.

2 THE COURT: Ms. Westbrooke, what town?

3 PROSPECTIVE JUROR: Roosevelt.

4 THE COURT: For how long?

5 PROSPECTIVE JUROR: Twenty-six, twenty-seven
6 years.

7 THE COURT: What is your highest level of
8 school?

9 PROSPECTIVE JUROR: Bachelor of arts.

10 THE COURT: Do you work? We know you do.
11 What do you do? What's the business?

12 PROSPECTIVE JUROR: Models. I book talents
13 and make deals.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR: Divorced.

16 THE COURT: Any children?

17 PROSPECTIVE JUROR: Three.

18 THE COURT: Grown or school age?

19 PROSPECTIVE JUROR: Grown.

20 THE COURT: What do they do?

21 PROSPECTIVE JUROR: My older daughter is an
22 entrepreneur right now. She is a manager in the south.

23 THE COURT: What about the other two?

24 PROSPECTIVE JUROR: Graduated. The other
25 two, the second one is a designer, graduated FIT. The

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1 third one is still in college and works in Staples, IT.

2 THE COURT: How do you like to spend your
3 spare time?

4 PROSPECTIVE JUROR: Dog, and I like to
5 garden.

6 THE COURT: Are you on social media?

7 PROSPECTIVE JUROR: Yes, for what I do. I'm
8 private for them. I don't like to --

9 THE COURT: You wouldn't post about this if
10 you are chosen?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you.

13 Ms. Maldinaldo, what town?

14 PROSPECTIVE JUROR: Uniondale.

15 THE COURT: How long?

16 PROSPECTIVE JUROR: Twenty-three years.

17 THE COURT: What is your highest level of
18 school?

19 PROSPECTIVE JUROR: Twelfth grade.

20 THE COURT: Do you work?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: What do you do?

23 PROSPECTIVE JUROR: Data entry.

24 THE COURT: Are you married?

25 PROSPECTIVE JUROR: No.

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1 THE COURT: Do you have a significant other?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: What does he or she do?

4 PROSPECTIVE JUROR: Construction.

5 THE COURT: Any children?

6 PROSPECTIVE JUROR: Three.

7 THE COURT: Grown or school age?

8 PROSPECTIVE JUROR: No school yet.

9 THE COURT: Little, little.

10 PROSPECTIVE JUROR: Very little.

11 THE COURT: How do you like to spend your
12 spare time?

13 PROSPECTIVE JUROR: Family.

14 THE COURT: Social media?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Thank you very much.

17 Mr. Pizzuto, what town?

18 PROSPECTIVE JUROR: West Hempstead.

19 THE COURT: For how long?

20 PROSPECTIVE JUROR: Twenty years.

21 THE COURT: What is your highest level of
22 school?

23 PROSPECTIVE JUROR: High school.

24 THE COURT: Do you work?

25 PROSPECTIVE JUROR: Yes.

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1 THE COURT: What do you do?

2 PROSPECTIVE JUROR: Baby-sitter and dance
3 instructor.

4 THE COURT: Are you married?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Significant other?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What does he or she do?

9 PROSPECTIVE JUROR: College student.

10 THE COURT: Do you have any children?

11 PROSPECTIVE JUROR: No.

12 THE COURT: How do you like to spend your
13 spare time?

14 PROSPECTIVE JUROR: Friends, family.

15 THE COURT: Are you on social media?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Can you avoid blogging and/or
18 posting?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Ms. Harvey, what town?

21 PROSPECTIVE JUROR: Hempstead.

22 THE COURT: For how long?

23 PROSPECTIVE JUROR: My whole life.

24 THE COURT: What is your highest level of
25 school?

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1 PROSPECTIVE JUROR: Some college.

2 THE COURT: Do you work?

3 PROSPECTIVE JUROR: I do.

4 THE COURT: What do you do?

5 PROSPECTIVE JUROR: I'm an executive

6 assistant for a CEO. It is a steel company.

7 THE COURT: Are you married?

8 PROSPECTIVE JUROR: Happily divorced.

9 THE COURT: What did your other half do when
10 you were together?

11 PROSPECTIVE JUROR: Cause problems.

12 Salesman.

13 THE COURT: Do you have any children?

14 PROSPECTIVE JUROR: Two.

15 THE COURT: Grown or school age?

16 PROSPECTIVE JUROR: Grown.

17 THE COURT: What do they do?

18 PROSPECTIVE JUROR: One works for the

19 railroad, the other is in construction.

20 THE COURT: How do you like to spend your
21 spare time?

22 PROSPECTIVE JUROR: Socialite like her.

23 THE COURT: Any social media for you?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Ms. Kallenberg.

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1 PROSPECTIVE JUROR: Hempstead since 1976.

2 THE COURT: What is your highest level of
3 school?

4 PROSPECTIVE JUROR: High school, graduated.

5 THE COURT: Do you work?

6 PROSPECTIVE JUROR: Roosevelt Union Free
7 School District.

8 THE COURT: Are you married?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Significant other?

11 PROSPECTIVE JUROR: No, not at the moment.

12 THE COURT: Any children?

13 PROSPECTIVE JUROR: No.

14 THE COURT: How do you like to spend your
15 spare time?

16 PROSPECTIVE JUROR: Family, friends and
17 reading.

18 THE COURT: Social media?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Gordon, what town?

21 PROSPECTIVE JUROR: Huntington.

22 THE COURT: How long?

23 PROSPECTIVE JUROR: Twelve years.

24 THE COURT: Huntington?

25 PROSPECTIVE JUROR: P.O. Box is Woodbury.

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1 THE COURT: What is the highest level of
2 school?

3 PROSPECTIVE JUROR: Two years of college.

4 THE COURT: Do you work?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What do you do?

7 PROSPECTIVE JUROR: I'm the gymnastic
8 coordinator for the Great Neck Park District.

9 THE COURT: Are you married?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Significant other?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Do you have any children?

14 PROSPECTIVE JUROR: No.

15 THE COURT: What do you do in your spare
16 time?

17 PROSPECTIVE JUROR: Hiking.

18 THE COURT: Are you on social media?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Can you avoid --

21 PROSPECTIVE JUROR: Yup.

22 THE COURT: Mr. Lutwich, what town?

23 THE WITNESS: Wantagh.

24 THE COURT: How long have you been there?

25 PROSPECTIVE JUROR: Seven years.

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1 THE COURT: Before that?

2 PROSPECTIVE JUROR: Bellmore.

3 THE COURT: How long?

4 PROSPECTIVE JUROR: Since I was born.

5 THE COURT: What is the highest level of
6 school?

7 PROSPECTIVE JUROR: Bachelor.

8 THE COURT: Do you work?

9 PROSPECTIVE JUROR: Data sales analyst.

10 THE COURT: Are you married?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Do you have a spouse?

13 PROSPECTIVE JUROR: Early childhood special
14 ed.

15 THE COURT: Do you have any children?

16 PROSPECTIVE JUROR: Two.

17 THE COURT: Grown or young?

18 PROSPECTIVE JUROR: Both under four.

19 THE COURT: How do you like to spend your
20 spare time?

21 PROSPECTIVE JUROR: Kids and sports.

22 THE COURT: Social media?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Can you avoid it?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Can I see the attorneys for a
2 minute?

3 (Whereupon, there was an off-the-record
4 discussion at the bench.)

5 THE COURT: Number thirteen, where are you
6 registered to vote?

7 PROSPECTIVE JUROR: I'm not registered.

8 THE COURT: It's a guess. It's a nitch in
9 our lovely system. You have a P.O. Box, but your
10 residence is Suffolk county, so I don't believe you are
11 actually eligible to sit on a jury in Nassau County
12 because you have to be a resident of Nassau County. We
13 have to send you back across the street with some note
14 or indication on your card. I don't know how they will
15 handle it. I don't believe you can sit here. Thank
16 you for being here all day. I appreciate it. You are
17 excused with the thanks of the Court.

18 At this time I'm going to turn this over to
19 the attorneys who will ask you all some questions.

20 Give your attention to the assistant district
21 attorney, please.

22 MR. PERRI: Good afternoon, ladies and
23 gentlemen, your Honor, defense counsel. My name is,
24 again, Assistant District Attorney Anthony Perri.

25 I've been selected by Madeline Singas, the

1 Acting District Attorney, to represent the government
2 in this case. First, I would like to thank you for
3 your service, for your time, taking time out of your
4 lives and responding. No one likes to get mail that
5 says you have to come down to Mineola.

6 As the judge has said, defense counsel will
7 say, I'll say it again here, the most important thing
8 is the answers you give are thorough, truthful,
9 forthcoming. If there is something embarrassing and
10 you wish to speak in private about it, you think you
11 are not the right juror for this case, indicate that
12 and we can talk privately to the judge. Most
13 importantly, this time, this interaction we are having
14 now is unique for the rest of the trial. We won't be
15 able to speak back and forth.

16 Defense counsel said I want to find a jury
17 that fits this case that can be fair and impartial and
18 listen to the evidence and render a just verdict based
19 on the evidence at the end of the case.

20 You have heard the charges in this case and
21 the allegations, and they are allegations at this time.
22 It's always the People's burden. The allegations are
23 serious. It is a case of child sexual abuse. Namely,
24 at this time we're alleging the defendant had oral
25 sexual contact, his mouth to the vulva and vagina of a

1 then six-year-old victim. Those allegations themselves
2 can be trouble to people and make them not fit, not to
3 be fair and impartial, not to be able to listen to the
4 evidence in this case.

5 After hearing the allegations, do you still
6 feel you could be fair and impartial and listen to the
7 evidence in this case?

8 PROSPECTIVE JUROR: Yes.

9 MR. PERRI: Mr. Campo?

10 PROSPECTIVE JUROR: Yes.

11 MR. PERRI: Ms. Campbell?

12 PROSPECTIVE JUROR: Yes.

13 MR. PERRI: Ms. Kennedy?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Does anyone else feel they can't
16 be fair and impartial based on the allegations?

17 PROSPECTIVE JUROR: Yes.

18 MR. PERRI: Ms. Maldinaldo, do you feel
19 because of the allegations you are not a good fit for
20 the trial?

21 PROSPECTIVE JUROR: Yes.

22 MR. PERRI: You would not be able to be fair
23 and impartial?

24 PROSPECTIVE JUROR: No.

25 MR. PERRI: Anyone else? Sorry.

1 Mr. Morales, based on the allegations in this
2 case, could you be a fair and impartial juror?

3 PROSPECTIVE JUROR: I'm pretty fair and
4 impartial, but I'd rather not.

5 MR. PERRI: Could you explain why you would
6 rather not?

7 PROSPECTIVE JUROR: That type of crime is
8 pretty low.

9 MR. PERRI: Does anyone else feel they could
10 not serve on this jury based on the allegations?

11 As part of the case, the People intend to
12 call in this case, not only adult witnesses, civilians,
13 law enforcement, medical personnel, as well as any
14 scientists. There will also be a child witness the
15 People intend on calling in this case.

16 Ms. Westbrooke, do you have a problem
17 evaluating or listening to the testimony of a child?

18 PROSPECTIVE JUROR: No problem.

19 MR. PERRI: Ms. Cavallaro, you worked as a
20 therapist in Nassau University Medical Center. Do you
21 have any problem being able to listen to child
22 testimony?

23 PROSPECTIVE JUROR: No.

24 MR. PERRI: Mr. Fried, do you have a problem
25 listening to a child witness?

1 PROSPECTIVE JUROR: I don't have any
2 problems, no.

3 MR. PERRI: Every human being is capable of
4 telling the truth. Every human being is capable of
5 lying. Every person, when put under oath, is going to
6 tell the truth.

7 Ms. Pizzuto, would you say a child is capable
8 of telling the truth?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: A police officer is capable of
11 telling the truth?

12 PROSPECTIVE JUROR: Yes.

13 MR. PERRI: When you are judging the
14 credibility of a person, Ms. Pizzuto, what would you
15 look for in judging credibility, whether or not you
16 believe them?

17 PROSPECTIVE JUROR: The details they'll talk
18 about, you know, what they see, and you have to -- they
19 will say what they have seen and what I'm going to
20 believe in what they say.

21 MR. PERRI: What would you look for when you
22 decide whether or not you believe what a person is
23 telling you?

24 PROSPECTIVE JUROR: Consistency. If they say
25 the same thing more than once, it's possibly true, not

1 that they will lie.

2 MR. PERRI: When you say, consistency, that
3 is one of the factors you look for, or I look for in
4 judging individual's credibility. Every time you are
5 telling something that happened to you, especially,
6 more than a year ago, did you tell it the exact same
7 way?

8 PROSPECTIVE JUROR: You don't tell it the
9 exact same way.

10 MR. PERRI: This is what happened, that's
11 what happened now. That doesn't change. The outcome,
12 whatever they say happened, happened. They might
13 remember from something that they didn't remember last
14 time, or they might not say something this time that
15 they said last time. The end result, the person is
16 dead. I saw them dead on the ground, that's the end
17 result. When I say, consistency, I mean the story has
18 to resemble each other, pretty much the same thing. Do
19 you disagree, Ms. Kallenberg?

20 PROSPECTIVE JUROR: Agree, I guess.
21 Children have their own body language. Other than
22 adult, I would be watching for body language too. I
23 work with children.

24 MR. PERRI: Does every child react the same
25 way to situations?

1 PROSPECTIVE JUROR: Absolutely not.

2 MR. PERRI: Does every person react the same?

3 PROSPECTIVE JUROR: No, absolutely not.

4 MR. PERRI: Is there anything specific
5 working with children, you are looking for anything
6 specific in the witnesses that if you don't see it, I'm
7 not leaving that?

8 PROSPECTIVE JUROR: No.

9 MR. PERRI: No?

10 PROSPECTIVE JUROR: No, I wouldn't do that.
11 People constantly change too.

12 MR. PERRI: Mr. Lutwick, you said you have
13 two children, correct?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Would you agree children, not
16 every child reacts in the same way as an adult
17 especially would expect?

18 PROSPECTIVE JUROR: Each time they will do it
19 differently.

20 MR. PERRI: Do you have any problem having
21 children sitting in the witness box, being fair and
22 impartial and listening to child testimony?

23 PROSPECTIVE JUROR: No.

24 MR. PERRI: Now, no one is arguing or saying
25 that process of being a juror will be an easy one. The

1 juror requires a lot of attention, requires you to
2 judge the facts in the case. It is your job and also
3 at the end it will require you to deliberate.

4 Mr. Campo, how do you feel about the process
5 of deliberating? Are you agreeing to be able to
6 discuss the evidence to work with the jurors that are
7 impaneled for deliberations and arrive at a verdict?

8 PROSPECTIVE JUROR: Yes.

9 MR. PERRI: If you disagree with another
10 juror, what would you try to do to convince you what
11 you believe the verdict should be?

12 PROSPECTIVE JUROR: I can only express what I
13 collected from any evidence or any testimony I heard,
14 just give them my opinion and what I take from it.

15 MR. PERRI: Ms. Campbell, what would you do
16 in the deliberations? Say you are the minority, that
17 if you want to convince more people of what you believe
18 is right, how would you do that?

19 PROSPECTIVE JUROR: You have to stick to the
20 facts. You have to stick to the evidence. You can't
21 veer away from it. If you are convinced of your
22 opinion, would you change your opinion to end the
23 process, to get out of here?

24 PROSPECTIVE JUROR: Not to get out of here.
25 I might be that one absentia.

1 MR. PERRI: If I told you there is no such
2 thing as abstaining in jury deliberations, that's not
3 an option, could you still deliberate fairly and
4 impartially even though you have to make decisions?

5 PROSPECTIVE JUROR: As I stated earlier,
6 whether we agree or not agree, I have to go along with
7 the decision.

8 MR. PERRI: Do you feel you are capable of
9 doing that, making a decision?

10 THE COURT: Let me jump in, Ms. Campbell, to
11 make sure I understand you correctly, and you
12 understand your job, if you are picked. If you are
13 picked as a juror, you have two options when you go
14 into the jury room. You either believe the People have
15 proven their case beyond a reasonable doubt and you
16 find the defendant guilty, or you believe the People
17 have not proven their case beyond a reasonable doubt
18 and you find the defendant not guilty. You can't say,
19 I don't feel like voting because I just don't want to.
20 But, you can, if you are the one person who says I'm
21 voting one way and everybody else is voting the other
22 way, you can stick to your guns if that's what you
23 believe the evidence shows.

24 PROSPECTIVE JUROR: That's kind of the
25 individual I am. I stick to what I believe.

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1 THE COURT: Go ahead.

2 MR. PERRI: Ms. Cavallar, do you agree with
3 testimony itself is evidence?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: Along with physical evidence,
6 photographs?

7 PROSPECTIVE JUROR: With everything else.

8 MR. PERRI: People telling their stories is
9 also evidence you have to consider.

10 PROSPECTIVE JUROR: Yes.

11 MR. PERRI: Would you be willing, based on
12 testimony, if you believe that testimony, if you
13 believe that person to be credible, believe them beyond
14 a reasonable doubt about what they say happened? Would
15 you be able to rely on that and if that met the burden
16 of beyond a reasonable doubt, based on testimony alone,
17 would you be able to return a verdict of guilty?

18 PROSPECTIVE JUROR: I think I have to have
19 all of the evidence in front of me presented to me.

20 MR. BERGER: I didn't hear you.

21 PROSPECTIVE JUROR: I would have to have all
22 of the evidence that is available in front of me to
23 make a correct decision in my opinion.

24 MR. PERRI: Mr. Fried, would you agree with
25 Ms. Cavallaro, all of the evidence is together, it's

1 not just one person, it's not just one individual, it's
2 looking at the case as a whole, multifaceted,
3 multilayered, looking at everything together in trying
4 to decide whether or not there is a reasonable doubt;
5 would you agree with that?

6 PROSPECTIVE JUROR: Absolutely. I need to
7 look at the whole picture.

8 MR. PERRI: Ms. Kallenberg, do you agree with
9 that?

10 PROSPECTIVE JUROR: Yes.

11 MR. PERRI: Some of the answers you gave
12 during her questioning as opposed to the group,
13 Ms. Campbell, when you were -- you said that,
14 unfortunately, you had a brother incarcerated?

15 PROSPECTIVE JUROR: Yes.

16 MR. PERRI: When the Judge asked you if he
17 was dealt with fairly in the process, you said you
18 don't know if he was treated fairly because you weren't
19 there. Do you have --

20 PROSPECTIVE JUROR: I said to that question I
21 wouldn't know. He's 60 now. He was a young adult
22 going from the detention center, being an adult and
23 going into -- doing recruit type of behavior. Do I
24 know if he was guilty for those things he was committed
25 for? I don't know that.

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1 MR. PERRI: Do you have negative feelings
2 about the judicial process, the courts, police, DA's
3 office, because of your brother's experience?

4 PROSPECTIVE JUROR: No.

5 MR. PERRI: Just this is a very sad time in
6 many ways for certain members of law enforcement and
7 for the community they're supposed to be serving. Can
8 everyone promise to divorce this case from what is
9 going on in the news, any coverage from law
10 enforcement, and generally, these detectives and
11 alleged victims based on the facts presented to you in
12 this case; Ms. Campbell?

13 PROSPECTIVE JUROR: It's totally different I
14 in society. It is totally different.

15 MR. PERRI: I'm making sure everyone can
16 reasonably separate those two and not lump everyone
17 into one bucket. Anyone here?

18 Mr. Campo, the Judge explained it's the
19 People's burden. We have to prove our case beyond a
20 reasonable doubt. We have to give you enough evidence
21 to get beyond any reasonable doubt. Not all doubt. Do
22 you accept those instructions and require the People to
23 get rid of every possible doubt you could have before
24 you are willing to give a verdict?

25 PROSPECTIVE JUROR: Yes.

1 MR. PERRI: Do you require the People to
2 prove their case to a certainty, including every
3 possible doubt?

4 PROSPECTIVE JUROR: I don't know that's
5 possible, so, no.

6 MR. PERRI: Would you require the People to
7 have absolute certainty in their case?

8 PROSPECTIVE JUROR: No.

9 MR. PERRI: One example used earlier was you
10 go to bed at night, look out the front window, you look
11 outside, look in the garden, the front yard, the lawn,
12 the street and see everything is dry and wake up the
13 next morning, open the front door, go to work. Your
14 yard, lawn, street, neighbors, et cetera, everything is
15 soaking wet.

16 Mr. Pizzuto, what might you assume happened
17 during that night?

18 PROSPECTIVE JUROR: It rained.

19 MR. PERRI: Is it possible the fire
20 department drove around at night and soaked the
21 neighborhood, watered everybody else's lawn; is that
22 possible?

23 PROSPECTIVE JUROR: It's possible.

24 MR. PERRI: Is it possible to say that is a
25 reasonable doubt in your mind as to whether or not it

1 rained the night before?

2 PROSPECTIVE JUROR: No.

3 MR. PERRI: Were you a teacher?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: What grade?

6 PROSPECTIVE JUROR: Fourth and fifth.

7 MR. PERRI: What grade did your husband
8 teach?

9 PROSPECTIVE JUROR: Three, four, five, gym.

10 MR. PERRI: What you units?

11 PROSPECTIVE JUROR: Primarily geriatrics.

12 Floor team. I go all over the hospital. We don't have
13 a pediatric unit in our hospital, in case you were
14 wondering.

15 MR. PERRI: Ms. Kallenberg, what do you do
16 for Roosevelt school district?

17 PROSPECTIVE JUROR: Special Ed. kids, K
18 through two.

19 MR. PERRI: Teacher's aide?

20 PROSPECTIVE JUROR: Yes.

21 MR. PERRI: You also, unfortunately, have
22 three cousins convicted of crimes, you said,
23 approximately ten years ago?

24 PROSPECTIVE JUROR: Off and on for the last
25 ten years.

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1 MR. PERRI: They have been through the
2 judicial system a few times?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Has any of that left you with an
5 impression positive or negative of police officers, the
6 courts, the district attorneys?

7 PROSPECTIVE JUROR: No.

8 MR. PERRI: Do you have any other impression
9 of the courts or the DA's office?

10 PROSPECTIVE JUROR: No.

11 MR. PERRI: Despite what happened, do you
12 feel you could be fair and impartial?

13 PROSPECTIVE JUROR: Yes.

14 MR. PERRI: You also said, unfortunately, you
15 did have family members.

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: Has that left you with any
18 impressions, positive or negative, about the police?

19 PROSPECTIVE JUROR: No. About them?

20 MR. PERRI: Did you feel you think they were
21 dealt with justly?

22 PROSPECTIVE JUROR: Yes.

23 MR. PERRI: Positive, negative impression of
24 the Court due to that?

25 PROSPECTIVE JUROR: No.

1 MR. PERRI: Thank you.

2 THE COURT: Mr. Berger. We're opening some
3 windows. Keep the outside voices on. It's harder to
4 hear. Keep the voices up.

5 MR. BERGER: Good afternoon. My name is
6 Michael Berger. I'm from Brooklyn, New York, currently
7 reside in Nassau County for the last 40 or so years.
8 Does anybody know me? Okay.

9 I have many questions. I'm going to be
10 asking much different than those of the DA. Those in
11 the back, pay attention as well. You may be here, and
12 you will have an idea where I'm going. I'm going to be
13 -- while I'm talking to one person, I'm really
14 addressing the remaining thirteen. If you have
15 something you think I should know, you will know what
16 I'm looking for. Raise your hand. Now, I'm talking to
17 all of you, even though I'm specifically talking to
18 one.

19 Mr. Campo, we all come to this courtroom with
20 an emotional side and an intellectual side, right? I'm
21 going to say, when we all are at home or in the
22 courtroom, we'll appeal to our intellectual side. I
23 can't ask you to check your emotions at the door. I
24 can say to you, if you feel something emotional coming
25 up, as you are sitting in this case, put it aside. I

1 have to use my mind here, judgment, intellect. Can you
2 do that?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: We had about 68 in the first
5 group. We only got eight jurors. Many of them, for
6 whatever reason, they couldn't sit on this case because
7 of the nature of the case or had other emotional
8 factors that they felt they couldn't sit here. Do you
9 understand? Let me point out -- let me name a couple
10 of emotional factors.

11 The claim here is that the defendant licked
12 the vagina of a six-year old girl. This case is
13 clearly about sex, a lot of discussion about sex, and
14 then the defendant is Hispanic and people can be
15 prejudiced against Hispanics. Would you agree some
16 people are prejudiced against Hispanics?

17 PROSPECTIVE JUROR: I would agree some people
18 are prejudice.

19 MR. BERGER: Against Hispanics?

20 PROSPECTIVE JUROR: Yes, I believe so.

21 MR. BERGER: I'm only asking you.

22 PROSPECTIVE JUROR: Do I have an opinion?

23 MR. BERGER: Do you have a belief people are
24 prejudice against black people, Hispanics?

25 PROSPECTIVE JUROR: I believe that people

1 have prejudice.

2 MR. BERGER: Not everybody, but obviously, if
3 you had any prejudice against Hispanics you shouldn't
4 sit; would you agree with that?

5 PROSPECTIVE JUROR: I would agree with that.

6 MR. BERGER: Do you all agree people have
7 prejudices, and then my next question is: Do any of
8 you have prejudices against Hispanic people? Fine.

9 You heard me mention all of the emotions.
10 Some of it is emotional. Would any of those factors
11 enter with your judgment in this case?

12 PROSPECTIVE JUROR: No.

13 MR. BERGER: That is collectively to the
14 remaining twelve.

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: Ms. Maldinaldo. Other than
17 Ms. Maldinaldo, the rest of you feel you can't sit on
18 this kind of case, and many people who excuse
19 themselves because of the nature. So, there are no
20 wrong answers here. You may have a prejudice, or
21 something may come up as they ask questions. You may
22 not be proud and go up to the bench and talk about it.
23 The whole idea is to get a panel of twelve people who
24 could be fair and objective in this particular case.

25 You heard the Judge tell you, Mr. Pizzuto,

1 that I don't have a burden to prove anything in this
2 case. Did you hear the Judge say that?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Ordinarily, in your lifetime, if
5 your friend comes up to you and says, do you know what
6 Mary did? Tells you a story what Mary did. Wait a
7 minute, I have to hear what Mary has to say.

8 PROSPECTIVE JUROR: Right.

9 MR. BERGER: A criminal case, there is no
10 burden on the defendant to prove anything, just the
11 prosecutor. So, do you understand only the prosecutor
12 has the burden, you shouldn't be expecting me to prove
13 anything?

14 PROSPECTIVE JUROR: Right.

15 MR. BERGER: Is that okay with you?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: A lot of you are coming for the
18 first time. It's not okay, they have to hear both
19 sides. The point is, just the prosecutor has the
20 burden of proving guilt beyond a reasonable doubt.

21 Did I get the sense you shouldn't sit on this
22 kind of a case?

23 PROSPECTIVE JUROR: I can do it, but I
24 wouldn't be comfortable.

25 MR. BERGER: You will be asked to evaluate

1 testimony in this particular case. Just because it's
2 evidence doesn't mean it is to be believed.

3 PROSPECTIVE JUROR: Exactly.

4 MR. BERGER: I wouldn't ask you what criteria
5 you use to see if somebody is telling you the truth.
6 You know what that is. I'm not asking to you
7 verbalize. Has anybody lied to you in your lifetime?

8 PROSPECTIVE JUROR: Sure.

9 MR. BERGER: They didn't come up to you and
10 say, I'm not going to tell you a lie. If you are
11 telling me you will lie to me, then I'll know. It's
12 not that obvious. It could be subtle here. You
13 believe you have the ability to -- the credibility to
14 evaluate the testimony and see if he or she is being
15 truthful?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: I'm not addressing -- does
18 anybody disagree with that? Does anybody think they
19 don't have that ability? They almost get up and swear
20 to tell the truth. Do you think anybody has gotten on
21 the witness stand and sworn to tell the truth and lied?

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: The fact is, you have an opinion
24 to that if I have to convince you that somebody lied in
25 this case, you would have an open mind?

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1 PROSPECTIVE JUROR: Yes.

2 MR. BERGER: Does anybody disagree with
3 Ms. Kennedy? Does everybody agree that people have
4 gotten on the witness stand, sworn to tell the truth
5 and lied?

6 How about Mr. Fried, do you think police
7 officers have done that?

8 PROSPECTIVE JUROR: I'm sure, yes.

9 MR. BERGER: You heard the difference. There
10 is no difference between a police officer's testimony.
11 I'm asking you your opinion. We are not inside your
12 heads. You don't sit in the courtrooms every day. You
13 have a belief that police officers are sworn to tell
14 the truth and nothing but the truth, correct?

15 PROSPECTIVE JUROR: Correct.

16 MR. BERGER: In this case, you disagree with
17 that answer, Mr. Morales. You have friends in the New
18 York City Police Department. Do you think police
19 officers have gotten on the witness stand and lied?

20 PROSPECTIVE JUROR: Sure.

21 MR. BERGER: What I would be asking you to
22 do, Mr. Harvey, I would be asking you to start at point
23 zero and be as ready to believe, as to disbelieve, as
24 to believe. Can you all assure me you would do that?
25 Don't give them an edge because they have sworn to tell

1 the truth. There's a critical evaluation you are to
2 critically evaluate the testimony. Don't give anybody
3 an edge one way or another, which leads me to a very
4 important principle. Let me ask Ms. Kallenberg. You
5 may have a belief that in 72 percent of the cases, the
6 person who is charged is guilty. Let's say you thought
7 about the criminal. You wouldn't say everybody is
8 guilty if they are charged. There was someone at a
9 different panel, he said where there is smoke, there is
10 fire. We wouldn't be going through all of this if the
11 defendant were not guilty. Lots of people have that
12 belief. That's not the way it works. Nobody believes
13 where there is smoke, there is fire.

14 Are you all accepting the fact this defendant
15 may be guilty, may be innocent? We don't know at this
16 point. You may have the belief 72 percent of the time
17 people are charged with a crime are guilty, but that
18 would mean 28 percent, they're not. I don't want you
19 to make a judgment based on percentages. If you go
20 back into the jury room, the odds are he's guilty
21 because I have the belief.

22 Let's say he studied the subject. That's not
23 what happens here because you don't know whether it's
24 the 72 or 28. That's why we have individual jurors
25 making the individual judgment in individual cases.

1 That's why you could believe that 91 percent of the
2 time witnesses are truthful. You don't know 91 percent
3 or nine percent. We don't make judgment. That's why
4 you judge it as you see it here in this courtroom.

5 Ms. Westbrooke, police officers, as well as
6 civilians, can tell a lie on the witness stand,
7 correct?

8 PROSPECTIVE JUROR: Sure.

9 MR. BERGER: You didn't raise your hand and
10 say, no, it doesn't happen?

11 MR. BERGER: Do you think a police officer,
12 detectives, coerce individuals in putting his name on a
13 piece of paper that he didn't make that statement?

14 PROSPECTIVE JUROR: Sure, that could be
15 possible.

16 MR. BERGER: Do you have an opinion as to
17 whether that happened?

18 PROSPECTIVE JUROR: Yes.

19 MR. BERGER: Does anybody disagree with that?
20 Mr. Lutwick, do you think police officers have taken
21 statements claiming they were by the subject and
22 weren't?

23 PROSPECTIVE JUROR: Has it ever happened,
24 yes.

25 MR. BERGER: If I were to urge that upon you,

1 would you have an open mind, correct?

2 PROSPECTIVE JUROR: Could this be a time,
3 yes.

4 MR. BERGER: Again, we don't know percentage,
5 but you would keep an open mind?

6 PROSPECTIVE JUROR: I work in percentages all
7 day long.

8 MR. BERGER: For all this, but you guys use
9 percentages. If you were evaluating your services,
10 looking at percentages of things you're getting done,
11 if you could eliminate from you the thought process of
12 wasting the odds of something happening versus not
13 happening. There's a difference between weighing the
14 odds of something and critically evaluating testimony
15 and using your intellect to evaluate and see what it
16 means. Am I to be concerned you think you might make a
17 judgment based upon percentage of how things normally
18 happen?

19 PROSPECTIVE JUROR: I don't think so.

20 MR. BERGER: But you are not sure?

21 How about you, Mr. Fried? Do you understand
22 the point I'm making?

23 PROSPECTIVE JUROR: I'm still with you.

24 THE COURT: Let me step in for a moment. You
25 cannot decide this case on odds. You cannot decide

1 this case on percentages. You have to decide this case
2 on the testimony you hear, how you evaluate it, whether
3 you find it credible and whether you believe the People
4 have met their burden with regards to the facts and
5 when you apply those facts to the law that I give to
6 you, what is the verdict you come out with. If you
7 cannot do that, if you are sitting there going, you
8 know what, I prefer evaluating life on odds or prefer
9 evaluating life on something other than just evaluating
10 credibility, or testimony, please let Mr. Berger know
11 and Mr. Perri know because this is definitely not the
12 place for you if that is what you intend to do if you
13 are picked as a juror.

14 Mr. Berger, get another answer from
15 Mr. Lutwick with regards to that.

16 MR. BERGER: Give me an answer.

17 PROSPECTIVE JUROR: I can take the math out
18 of it.

19 MR. BERGER: Thank you. Ms. Cavallaro, we
20 had said yesterday, you know, you are asking me to
21 critically evaluate the testimony of a witness, and if
22 I can't figure out why they are lying, then they must
23 be telling the truth. I'm saying to you, your function
24 as a juror is not to figure out why somebody lied, only
25 if they did, because people lie for the strangest

1 reasons. They go to therapists to find out what most
2 devastates them. You are not expected to know why they
3 lied, only if they did. Something about the story may
4 not make sense to you. You don't have to sit there and
5 figure out why. Does everybody understand that?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: It's a very serious case. I
8 think you can assume that from the nature of the
9 charges. Are you just as prepared to vote not guilty
10 in this case even though it's that serious as -- let's
11 assume, for example, as you would in trespass. You
12 take a trespass case, not as particularly serious.
13 It's criminal, but not particularly serious. I want to
14 lean over to the prosecution because this is such a
15 serious case. Would you think in those terms at all?

16 PROSPECTIVE JUROR: I think I would base my
17 opinion at the end on the facts. I have no problem
18 saying not guilty if I feel he is not guilty. I know
19 it's serious based on all of the evidence that he --

20 MR. BERGER: I appreciate what you are
21 saying. All I'm saying to you is, that I think people
22 might be more inclined hopefully to vote not guilty in
23 a trespass case as opposed to in this case, at the end
24 of this case.

25 PROSPECTIVE JUROR: We're not talking about

1 trespass. This is a serious case.

2 MR. BERGER: Are you more inclined to vote
3 guilty on this case because it is so serious as opposed
4 to a trespass case?

5 PROSPECTIVE JUROR: I understand what you are
6 saying. You are not talking a trespass case. The
7 degrees of how bad the case is, we're talking about
8 this particular case. I don't want to talk about --
9 it's a bad case, and I can vote not guilty as well as I
10 could vote guilty depending upon what I'm shown.

11 MR. BERGER: I'm asking as to whether or not
12 the seriousness of the case would make you lean towards
13 voting guilty?

14 PROSPECTIVE JUROR: My point is no.

15 MR. BERGER: Ms. Kallenberg, how about you?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: It is serious, are you just as
18 likely to vote not guilty?

19 PROSPECTIVE JUROR: Right.

20 MR. BERGER: Would you be upset with me,
21 Mr. Fried, if I have to vigorously have to
22 cross-examine a six or seven-year old child in this
23 trial?

24 PROSPECTIVE JUROR: I would be upset.

25 MR. BERGER: With me, yes?

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1 THE COURT: You understand that is his job?

2 PROSPECTIVE JUROR: That's your job. I
3 wouldn't be upset. That's your job.

4 MR. BERGER: My concern is --

5 PROSPECTIVE JUROR: That's what you are up
6 here for. Would I be upset? No. That's part of the
7 job. It's part of the -- it's part of the way we find
8 out the information that is presented to us, guilty or
9 not.

10 MR. BERGER: Ms. Cavallaro, how about you,
11 you would not?

12 PROSPECTIVE JUROR: Yes, I would not.

13 MR. BERGER: Anybody else? Ms. Kennedy,
14 would you be upset if I vigorously have to
15 cross-examine?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: I'm representing Mr. Ramos here.
18 This is an attempt to get to the truth, and if it has
19 to be that way, then you will accept that. You
20 wouldn't hold it against me or my client?

21 THE COURT: Five more minutes.

22 MR. BERGER: So far from all of my questions
23 I've asked with the exception of Ms. Maldinaldo and
24 maybe Mr. Morales, you all indicated to me that you are
25 fair and impartial and prepared -- just as prepared to

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1 vote not guilty as guilty, correct?

2 Now, I'm going to ask you each individually.
3 If you were the defendant, sitting there, would you be
4 satisfied with twelve of Ms. Kennedy's judging you? Is
5 your frame of mind so fair that you would be pleased to
6 have twelve Ms. Kennedy's judging you in this case?

7 PROSPECTIVE JUROR: Yes, I think so.

8 MR. BERGER: I'm not sure?

9 PROSPECTIVE JUROR: Yes, I'm fair.

10 MR. BERGER: Everybody likes to believe
11 they're fair. I'm not discrediting what you said.
12 Everybody likes to think they could be fair. It's
13 human nature. Nobody is going to get up and say, I'm
14 an unfair person. The best I could do is consider your
15 frame of mind right now. That's the best I can do and
16 ask you whether or not your frame of mind is so fair
17 you would be with people judging you if you were
18 sitting there.

19 PROSPECTIVE JUROR: Yes, it's the type of
20 question. Yes.

21 MR. BERGER: Only you know your frame of
22 mind. You are the only one I could ask.

23 PROSPECTIVE JUROR: Right.

24 MR. BERGER: You don't sound so convinced.

25 PROSPECTIVE JUROR: I know. It's a strange

1 concept.

2 MR. BERGER: Everybody else has time to think
3 about it. Ms. Norton, how about you?

4 PROSPECTIVE JUROR: It's an excellent
5 question. Knowing me, I'm very good at reasoning and
6 very reasonable, very good at critical thinking and
7 comparing. If I had twelve of me sitting on a jury
8 against me, I would feel comfortable I would get a fair
9 verdict. I think it's a great question.

10 MR. BERGER: Mr. Campo, you would be
11 satisfied with twelve of you judging you?

12 PROSPECTIVE JUROR: The difficulty is
13 variable that we don't know what we're discussing yet.
14 In general, we know what we're talking about, but I am
15 a clean slate and ready to evaluate what is presented
16 to me.

17 MR. BERGER: You don't know what is coming,
18 but you know your frame of mind?

19 PROSPECTIVE JUROR: Yes.

20 MR. BERGER: Ms. Campbell, how about you,
21 would you be satisfied with twelve of you judging you
22 if you were sitting there?

23 PROSPECTIVE JUROR: If I was sitting there --
24 if you are asking me to fill the position of the
25 defendant, specifically, everything is subject to

1 question. Do you know what I'm saying? I don't get
2 what you are asking me.

3 MR. BERGER: You are telling me you are fair
4 and impartial, right?

5 PROSPECTIVE JUROR: Yes.

6 MR. BERGER: I'm asking you to think about
7 your frame of mind. I'm asking you if your frame of
8 mind is so fair and impartial that if you were sitting
9 where Mr. Ramos is, you would be happy with twelve
10 Ms. Campbell on the jury?

11 PROSPECTIVE JUROR: Yes, because I know my
12 frame of mind.

13 MR. BERGER: That's my question, Mr. Morales.
14 I need twelve people to judge. If you are the same
15 twelve people -- I'm asking for your frame of mind.
16 I'm not asking people -- of the same people, I'm asking
17 about your frame of mind, twelve people with your
18 present frame of mind judging you.

19 PROSPECTIVE JUROR: Yes. Why not?

20 MR. BERGER: Mr. Fried?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERGER: Ms. Cavallaro?

23 PROSPECTIVE JUROR: Yes.

24 MR. BERGER: Mr. Lutwick?

25 PROSPECTIVE JUROR: Yes.

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1 MR. BERGER: Mr. Kallenberg?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Ms. Harvey?

4 PROSPECTIVE JUROR: Yes.

5 MR. BERGER: Mr. Pizzuto?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Ms. Westbrooke?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: You can all assure me no matter
10 what piece of evidence you hear during the course of
11 this trial you won't say after, that's it, heard
12 enough, he's guilty. Keep an open mind throughout the
13 entire trial. Wait for the opening by counsel and then
14 consider. Do you understand all of you have to keep an
15 open mind?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: Ms. Kennedy, back to the
18 question of the frame of mind.

19 PROSPECTIVE JUROR: I did have more time.
20 Someone down there said something. I was thinking I
21 wouldn't want twelve different people. That was my --
22 I understand the frame of mind now. That was the part
23 I didn't get.

24 THE COURT: One minute.

25 MR. BERGER: Newspapers and magazines.

1 PROSPECTIVE JUROR: Newsday, People. That's
2 probably it.

3 MR. BERGER: Ms. Norton?

4 PROSPECTIVE JUROR: Channel news.

5 MR. BERGER: Newspapers or magazines?

6 PROSPECTIVE JUROR: Sometimes I read Newsday.
7 Magazines, it's mostly Good Housekeeping, simple, Shop
8 Smart, Nursing Journal.

9 MR. BERGER: Mr. Campo?

10 PROSPECTIVE JUROR: Newsday, Car & Driver.

11 MR. BERGER: Ms. Campbell?

12 PROSPECTIVE JUROR: No newspapers. Anything
13 that's trendy.

14 MR. BERGER: I've never heard anybody use the
15 word socialite. What is a socialite?

16 PROSPECTIVE JUROR: Community and child
17 advocate, involved in church, involved in
18 socialization.

19 MR. BERGER: Mr. Morales?

20 PROSPECTIVE JUROR: Daily News, Newsday,
21 Reader's Digest. Whatever is in the dentist office.

22 MR. BERGER: Ms. Cavallaro?

23 PROSPECTIVE JUROR: I don't read magazines
24 that much. I read the Times. It takes about a
25 weekend. It's good for a week.

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1 MR. BERGER: Ms. Westbrooke?

2 PROSPECTIVE JUROR: Newspapers here and
3 there. Of course, the Star, Inquirer, Legal Brief.
4 Things with interest.

5 MR. BERGER: Mr. Pizzuto?

6 PROSPECTIVE JUROR: No magazines or
7 newspapers.

8 MR. BERGER: Ms. Harvey?

9 PROSPECTIVE JUROR: Newsday. Wall Street
10 Journal. I don't really do magazines. Essence, I
11 kinda like.

12 MR. BERGER: Ms. Maccio?

13 PROSPECTIVE JUROR: Newsday, opera magazines.
14 The O.

15 MR. BERGER: Unreal. A retired New York City
16 Police Officer is something I would be concerned about.

17 PROSPECTIVE JUROR: No, because I wouldn't
18 talk to him except to wish him a happy birthday.

19 MR. BERGER: You owe him no explanation if
20 your verdict is not guilty?

21 PROSPECTIVE JUROR: Correct.

22 MR. BERGER: You are your own person?

23 PROSPECTIVE JUROR: Yes.

24 MR. BERGER: Mr. Lutwick?

25 PROSPECTIVE JUROR: No newspapers.

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1 THE COURT: Thank you.

2 MR. BERGER: You have a family member on your
3 wife's side who is a police officer?

4 PROSPECTIVE JUROR: Correct.

5 MR. BERGER: Any concern about that?

6 PROSPECTIVE JUROR: No.

7 THE COURT: At this point we'll give you a
8 ten-minute break. The lawyers will do what they need
9 to do legally to determine who will remain on the case
10 as jurors.

11 Listen to the instructions of the officers.
12 Remember your seats if you are in the front.

13 People in the back, a ten-minute break also.
14 Step out of the courtroom. Be prepared to come back
15 in. We'll get to all of you next. Thank you.

16 (Whereupon, the jury panel exited the
17 courtroom.)

18 THE CLERK: People, do you have a challenge
19 for cause, jurors one through four?

20 MR. PERRI: No, your Honor.

21 THE CLERK: Defense counsel?

22 MR. BERGER: No, your Honor.

23 THE CLERK: Any challenge for cause, defense
24 counsel?

25 MR. BERGER: No.

1 THE CLERK: People, do you wish to exercise a
2 peremptory challenge?

3 MR. PERRI: Yes, perempt challenges on juror
4 number two, Norton, juror number four, Ms. Campbell.

5 THE CLERK: Defense counsel, juror number one
6 or three, do you wish to exercise perempt challenges?

7 MR. BERGER: Number three.

8 THE CLERK: Jill Kennedy will become juror
9 number nine.

10 MR. PERRI: Yes.

11 THE CLERK: Do you agree, defense counsel?

12 MR. BERGER: Yes, your Honor.

13 THE CLERK: Challenge for cause, five, six,
14 or seven?

15 MR. PERRI: Yes, your Honor. People
16 challenge for cause juror number five.

17 MR. BERGER: Consent.

18 THE COURT: Thank you. Five is gone for
19 cause.

20 MR. PERRI: That's all for cause, five, six,
21 seven.

22 THE CLERK: Defense counsel, do you wish to
23 challenge for cause six or seven?

24 MR. BERGER: No, your Honor.

25 THE CLERK: People, do you wish to perempt

1 challenge juror number six or seven?

2 MR. PERRI: The People exercise a perempt
3 challenge for juror number seven.

4 THE CLERK: Defense counsel, do you wish to
5 exercise a perempt challenge as to juror number six?

6 MR. BERGER: Yes.

7 THE CLERK: People, do you wish to challenge
8 for cause juror number eight, nine or ten?

9 MR. PERRI: People challenge for cause jurors
10 number eight and nine. With respect to juror number
11 eight, the juror, what's equivocal about being able to
12 become available on each and every day, she did state
13 she wished to be a juror. She also explained that the
14 desire was based primarily -- she wanted to get this
15 over with so she wouldn't have to be on another case.
16 She was late in coming back, over ten minutes late in
17 coming back in following the Court's direction. The
18 People ask her to be excused for cause.

19 MR. BERGER: I oppose that. The juror went
20 to the wrong building, which can happen. She went to
21 the east wing instead of the west wing.

22 THE COURT: It's denied.
23 Let's do cause for nine.

24 MR. BERGER: Consent.

25 THE COURT: People, wish to exercise a

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1 perempt challenge on eight or ten?

2 MR. PERRI: Your Honor, the People exercise a
3 perempt challenge to both jurors eight and ten, your
4 Honor.

5 THE CLERK: People wish to challenge for
6 cause juror number eleven, twelve or fourteen?

7 MR. PERRI: No, your Honor.

8 THE CLERK: Defense counsel, do you wish to
9 challenge for cause eleven, twelve or fourteen?

10 MR. BERGER: No, your Honor.

11 THE CLERK: Do the People wish to perempt
12 challenge eleven, twelve or fourteen?

13 MR. PERRI: The People exercise a perempt
14 challenge on juror number twelve.

15 THE CLERK: Does defense counsel wish to
16 perempt challenge as to juror number eleven or
17 fourteen?

18 MR. BERGER: Number fourteen.

19 THE CLERK: Carolyn Harvey will become juror
20 number ten.

21 Agreed, People?

22 MR. PERRI: Yes.

23 THE CLERK: Agreed, defense counsel?

24 MR. BERGER: Yes.

25 THE COURT: Bring the jurors in. Do the

1 final session. Take a short break so everyone can use
2 the facility and stretch, then refill the box. See how
3 far we get. Tomorrow morning, 9:30, we'll finish with
4 the People that are left in the office. Let's bring in
5 the jury.

6 (Whereupon, the jury panel entered the
7 courtroom.)

8 THE CLERK: Jurors in the box, may I have
9 your attention, please. If I call your name, you have
10 been selected to serve on this jury. Juror number nine
11 will be Jill Kennedy. Juror number ten will be Carolyn
12 Harvey. If I called your name, remain seated.

13 If I did not call your name, you are excused
14 with the thanks of this Court from this panel.
15 Carefully step out of the box and follow the
16 instructions of the court officer.

17 Are these jurors satisfactory to the People?

18 MR. PERRI: Yes, your Honor.

19 MR. BERGER: Yes, your Honor.

20 (Whereupon, the jurors were duly sworn by the
21 clerk of the court.)

22 THE COURT: Welcome aboard to both of you.
23 As you know, I will not need you back here in court
24 until Monday morning at 9:30 sharp. The officers will
25 tell you where to report at that time. Between now and

1 then, please remember to keep an open mind about this
2 whole process and the trial.

3 Do not discuss the case amongst yourselves or
4 with anyone else during the trial. Do not permit
5 anyone to discuss the case in your presence. Do not
6 talk to the lawyers, witnesses, or the defendant about
7 anything during the trial.

8 And again, if you happen to run into any of
9 us, we will ignore you. Don't take it personally.
10 Don't go and visit the place where the charged crime
11 was committed, or any other place involved in the case.
12 Don't try to research the case over the weekend. Don't
13 go to the library. No Wikipedia, nothing. Have a
14 great rest of the weekend. See you Monday morning.
15 Step out of the box.

16 (Whereupon, the jurors exited the courtroom.)

17 THE COURT: Let's refill the box, please.

18 THE CLERK: Tine Graziosi. First name

19 T-I-N-E. Last name G-R-A-Z-I-O-S-I, seat number one.

20 Jacqueline Zozzaro, Z-O-Z-Z-A-R-O, seat
21 number two.

22 Thomas Plactere, P-L-A-C-T-E-R-E. First name
23 Thomas. Seat number three.

24 Seat number four, Sun Mi Joo. First name
25 S-U-N. Middle name M-I. Last name J-O-O.

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1 Pasquel Perrelli, P-E-R-R-E-L-L-I, seat
2 number five.

3 Amy Serwitz, S-E-R-W-I-T-Z, seat number six.

4 Gerhard Ramesberger. First name spelled
5 G-E-R-H-A-R-D. Last name R-A-M-E-S-B-E-R-G-E-R, seat
6 number seven.

7 Seat number eight, Itcel Rios. I-T-C-E-L is
8 the first name. Last name spelled, R-I-O-S.

9 Seat number nine, Margaret Cohen, C-O-H-E-N.

10 Seat number ten, Rosemary Olenick,
11 O-L-E-N-I-C-K.

12 Seat number eleven, Cynthia Canady,
13 C-A-N-A-D-Y.

14 Seat number twelve, Cathy J. Fernandez.
15 Cathy spelled with a C. Last name F-E-R-N-A-N-D-E-Z.

16 Seat number thirteen, Stephanie Dorsaint,
17 D-O-R-S-A-I-N-T.

18 Seat number fourteen, pardon me, Sylvia
19 Candelo, C-A-N-D-E-L-O.

20 THE COURT: Welcome everyone to the front of
21 the courtroom. As we predicted, you would eventually
22 make it up here. I want to thank you all for your
23 patience in this process. Hopefully you have been
24 paying attention. I will give you reminders about the
25 areas we covered. If there is anything you need to

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1 tell me, raise your hand and let me know.

2 Does everybody in the front understand the
3 English language and has been following the law? Raise
4 your hand if you did not.

5 Ms. Joo, what language is it that you speak?

6 PROSPECTIVE JUROR: Korean.

7 THE COURT: How long have you been in the
8 country?

9 PROSPECTIVE JUROR: Twelve years.

10 THE COURT: Have you been able to follow the
11 law with everything that has been going on?

12 PROSPECTIVE JUROR: It's pretty hard,
13 especially --

14 THE COURT: You have to keep your voice up.

15 PROSPECTIVE JUROR: I don't think I'm good
16 enough to understand all of the words.

17 THE COURT: On consent?

18 MR. PERRI: Yes, your Honor.

19 MR. BERGER: Yes.

20 THE COURT: You are excused from this case.
21 You need to go back to central jury. They will find
22 another case for you.

23 Anyone else having difficulty with the
24 English language?

25 THE CLERK: Shafaroon Rafeek, R-A-F-E-E-K.

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1 First name spelled S-H-A-F-A-R-O-O-N, seat number four.

2 THE COURT: Welcome, Ms. Rafeek. Do you have
3 any problem with the English language?

4 PROSPECTIVE JUROR: No.

5 THE COURT: The next area I discussed with
6 everybody is your willingness and ability to follow the
7 law as I give it to you, including the fact that the
8 defendant is presumed innocent. That the People have
9 the burden of proof of guilt beyond a reasonable doubt,
10 and that there is -- if the defendant does not testify
11 as a witness, that is not a factor from which any
12 inference unfavorable to the defendant may be drawn.

13 Does anybody have an issue with those three
14 concepts and cannot follow them? Raise your hand. Let
15 the record reflect, Ms. Rafeek.

16 PROSPECTIVE JUROR: I don't like to judge
17 people.

18 THE COURT: Is that something that is
19 personal?

20 PROSPECTIVE JUROR: Personal, not religious.

21 THE COURT: If you were picked as a juror in
22 this matter, would you be able to get past that
23 personal feeling?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Thank you for your honesty.

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1 On consent?

2 MR. PERRI: Yes.

3 MR. BERGER: Yes.

4 THE COURT: You are excused.

5 THE CLERK: Karen Yotso, Y-O-T-S-O, seat
6 number four. Welcome. Anything you need to tell me so
7 far?

8 PROSPECTIVE JUROR: I'm not going to get paid
9 for work.

10 THE COURT: If you don't work, you don't get
11 paid?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Where do you work?

14 PROSPECTIVE JUROR: Investor relations
15 company.

16 THE COURT: Although, we weren't up to that.
17 Consent?

18 MR. BERGER: Yes.

19 MR. PERRI: Yes.

20 THE COURT: You can leave.

21 THE CLERK: Abraham Raindlich,
22 R-A-I-N-D-L-I-C-H, seat number four.

23 THE COURT: Good afternoon.

24 PROSPECTIVE JUROR: Good afternoon.

25 THE COURT: Any problem with the English

1 language or three concepts of law I've gone over so
2 far?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Next area I talked with everyone
5 earlier, those type A personality that go into the jury
6 room and refuse to deliberate. Is there anybody here
7 the type of person that is not going to be willing to
8 deliberate, your way is the only way and it's always
9 the right way? Does anybody have that?

10 It's not a bad thing the way some people are.
11 Raise your hand if that's your personality.

12 We'll have you come join us, ma'am. No need
13 to be left alone.

14 THE CLERK: Jane Kornahren,
15 K-O-R-N-A-H-R-E-N.

16 THE COURT: Welcome. You heard everything I
17 said so far. Is there anything you need to tell me?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Each of you promise you will
20 decide the case without fear, favor, sympathy, bias, or
21 prejudice for or against the People, the defendant, or
22 any witness, be that witness a police officer or
23 civilian?

24 PROSPECTIVE JUROR: I have a brother
25 incarcerated, a stepbrother incarcerated.

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1 THE COURT: Do you feel that is going to get
2 in the way of your being fair and impartial in this
3 case?

4 PROSPECTIVE JUROR: No, ma'am.

5 THE COURT: That's Ms. Canady.

6 PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: I think I saw another hand,
8 Mr. Ramesberger.

9 PROSPECTIVE JUROR: My whole family is NYPD.
10 ESU, brother-in-law 105.

11 MR. BERGER: Father and father-in-law
12 retired, brother-in-law ESU, and brother is 105.

13 THE COURT: Is that going to prevent you from
14 being able to sit in judgment of law enforcement
15 officers?

16 PROSPECTIVE JUROR: Probably. Yes. I'm
17 sorry.

18 THE COURT: You don't need to be sorry. Is
19 there anyone else that has anything they want to add
20 with regard to fear, sympathy, bias, or prejudice?

21 Ms. Kornahren.

22 PROSPECTIVE JUROR: My former job I had an
23 altercation with a situation of a child abuse type
24 situation. I don't know if it's going to have a great
25 impact. It did have an emotional residue in my former

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1 job.

2 THE COURT: What was your former job?

3 PROSPECTIVE JUROR: I was a hospital care
4 investigator. I had to assess whether the particular
5 person, hospital bill, the child hospital bill, would
6 be paid by the Bureau of Child Services, or by
7 Medicaid. I had to question the father, and it was an
8 unpleasant situation that resulted.

9 THE COURT: I do appreciate that would be an
10 unpleasant situation. I appreciate this is not an easy
11 case and makes many of us uncomfortable, not just this
12 case, but any case where you are asked to be a juror
13 puts you in an uncomfortable position. I need to know
14 whether or not, as you sit here today, that you are
15 going to somehow think about what happened in the past
16 and use it either for or against the People and the
17 defendant and not try this case just on the evidence
18 here.

19 PROSPECTIVE JUROR: I'm going to make a
20 conscious effort to remember it. I had a problem with
21 my job at that point. There was an altercation that
22 ensued between me and the person I interviewed. It's
23 something that I remember. I would try to do my best.
24 It's still something there.

25 THE COURT: Thank you very much for letting

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1 us know. Anyone else with regards to this topic?

2 Ms. Dorsaint.

3 PROSPECTIVE JUROR: My husband is NYPD and my
4 brother-in-law is NYPD, and brother-in-law is defense
5 counsel, Suffolk attorney.

6 THE COURT: Any reason it would get in the
7 way of you being fair and impartial?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Can you tell me why that is.

10 PROSPECTIVE JUROR: I'm married to someone
11 who tells me cases, and plus having a three-year old
12 and also expecting, it's not a good case for me at all.

13 THE COURT: Very good. Thank you.

14 Anyone else at this point, just on the topics
15 we covered so far. Sit tight everyone.

16 Anybody in the box up front know any of the
17 attorneys, any of my court staff, and the defendant or
18 any of those people whose names were on the list?

19 Raise your hand if you believe you knew someone.

20 If anyone has a health issue that we need to
21 be concerned with that would prevent you from being
22 able to sit in this case, any health issues, raise your
23 hand.

24 Now, let's talk about those dates again. As
25 you know, if you are picked as a juror, you don't have

1 to be back here until Monday and then we're working May
2 11th through May 14th, the following week only working
3 the 19th, 20th and 21st. You will have Friday and
4 Monday for Memorial Day, and then we're working the
5 26th through the 29th.

6 Does anyone have any issues with the dates?
7 Keep your hand up with the issue with the dates.

8 THE COURT: The first hand I saw,
9 Mr. Perrelli.

10 PROSPECTIVE JUROR: My job only covers for
11 the first five days of jury duty.

12 THE COURT: Thank you. The next hand I saw
13 was Cohen.

14 PROSPECTIVE JUROR: I have a commitment to be
15 in Maine this weekend. I don't know if I'll be back on
16 Monday.

17 THE COURT: The next hand and yell if I
18 missed you, Ms. Fernandez.

19 PROSPECTIVE JUROR: I'm taking my mother for
20 surgery on the 13th and that's the only day that is a
21 conflict for me, but I don't know if it's morning yet
22 or afternoon. I wouldn't know until the night before.

23 THE COURT: I'm going to go out on a limb and
24 say the surgery.

25 PROSPECTIVE JUROR: She already waited a

1 month.

2 THE COURT: Thank you for letting me know.

3 Ms. Dorsaint.

4 PROSPECTIVE JUROR: Doctors' appointments,
5 sonogram appointments, doctors' appointment next week,
6 also sonogram and often doctors' appointments.

7 THE COURT: Yes, Ms. Candelo.

8 PROSPECTIVE JUROR: I have a conference on
9 the 14th. I'm required by my job, and also to continue
10 my license. And I also have a doctor's appointment I
11 scheduled a month ago, which would be difficult on the
12 12th, which would be difficult to reschedule.

13 THE COURT: Can I see the attorneys at the
14 bench, please.

15 (Whereupon, there was an off-the-record
16 discussion at the bench.)

17 THE COURT: The following people are excused
18 with the thanks of the Court from this case. It
19 doesn't mean you are off the hook forever. It means
20 this case is either the wrong type of case, or too long
21 for you.

22 Listen to the instructions of the officer
23 once you leave. The juror sitting in seat four,
24 Mr. Raindlich, you are excused. Mr. Ramesberger, you
25 are excused. Mr. Perrelli, seat five; Ms. Cohen, seat

1 nine; Ms. Fernandez, in seat twelve; Ms. Dorsaint in
2 seat thirteen, and Ms. Kornahren in seat fifteen.

3 Thank you all.

4 Let's do a little more with the remainder of
5 you and give you instructions at the end of the day.

6 Now, I need to know if any of the remaining
7 jurors, I asked questions about victim of a crime,
8 witness of a crime, convicted of a crime, or has a
9 pending criminal or civil case, yourself, family
10 members or friends. Raise your hand if you are in any
11 of those categories.

12 We also talked about your ability to be a
13 fair juror based on the nature of the crimes charged.
14 You heard a few people already say, I don't think this
15 is the right kind of case for me. I understand it's
16 uncomfortable what we need to know. The topic matter
17 alone, the topic matter will be such you cannot listen
18 to the testimony, evaluate the evidence and be fair and
19 impartial. Raise your hand if that's a problem. No
20 hands have been raised.

21 You heard me tell everyone police officers
22 don't get a leg up. They come in here, they testify,
23 they get evaluated just like everyone else. Does
24 anybody have a problem with doing that? Raise your
25 hand if you do. The record will reflect no hands have

1 been raised.

2 You know this crime allegedly occurred at 124
3 Park Avenue in Roosevelt, New York.

4 Did anybody go by that location, whether it
5 be to and from work, or to and from home?

6 Are there any religious beliefs that would
7 prevent you from sitting? Let the record reflect no
8 hands have been raised.

9 Have any of you sat previously on a criminal
10 jury, civil jury, or a grand jury? Raise your hand if
11 that's the situation. Very good.

12 I'll ask you all some questions.

13 Ms. Graziosi, which town do you reside in?

14 PROSPECTIVE JUROR: Glen Cove.

15 THE COURT: For how long?

16 PROSPECTIVE JUROR: Ten years.

17 THE COURT: Do you work?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: What do you do?

20 PROSPECTIVE JUROR: I work in the IT
21 department of --

22 THE COURT: Of where?

23 PROSPECTIVE JUROR: Optical Distributors.

24 THE COURT: What is the highest level of
25 school?

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1 PROSPECTIVE JUROR: Bachelor degree.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Does your spouse work?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What does he or she do?

7 PROSPECTIVE JUROR: Mason.

8 THE COURT: Do you have any children?

9 PROSPECTIVE JUROR: Yes, one grown daughter.

10 THE COURT: What does she do?

11 PROSPECTIVE JUROR: Digital marketing.

12 THE COURT: How do you like to spend your
13 spare time?

14 PROSPECTIVE JUROR: Knitting, hanging out
15 with friends.

16 THE COURT: Social media?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Did you put this morning, going
19 to Mineola courts?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Can you give me assurance you
22 won't talk about this case on social media?

23 PROSPECTIVE JUROR: No problem.

24 THE COURT: Do you blog?

25 PROSPECTIVE JUROR: No.

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1 THE COURT: Don't start blogging if you are
2 picked as a juror. Thank you very much.

3 Ms. Zozzaro, what town do you reside in?

4 PROSPECTIVE JUROR: Massapequa Park. My
5 actual last name is Griffen. That's my maiden name.

6 THE COURT: Thank you very much. How long
7 have you been in Massapequa Park?

8 PROSPECTIVE JUROR: Nine years.

9 THE COURT: Before that?

10 PROSPECTIVE JUROR: Rockville Centre for
11 about five years and Valley Stream before that.

12 THE COURT: What is the highest level you
13 completed in school?

14 PROSPECTIVE JUROR: High school.

15 THE COURT: Do you work?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: What do you do?

18 PROSPECTIVE JUROR: Administration at Macy's.

19 THE COURT: Married?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What does your spouse do?

22 PROSPECTIVE JUROR: He works for the TSA in
23 Islip Airport.

24 THE COURT: Any children?

25 PROSPECTIVE JUROR: No.

Proceedings

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1 THE COURT: How do you like to spend your
2 spare time?

3 PROSPECTIVE JUROR: With my husband, family.

4 THE COURT: Are you on social media?

5 PROSPECTIVE JUROR: I am. I don't put my
6 life out there.

7 THE COURT: Thank you very much. I
8 appreciate that.

9 Mr. Plactere, what town?

10 PROSPECTIVE JUROR: Bayville, New York.

11 THE COURT: How long have you been there?

12 PROSPECTIVE JUROR: Fifty-something years.

13 THE COURT: Highest level of school?

14 PROSPECTIVE JUROR: High school.

15 THE COURT: Do you work?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: What do you do?

18 PROSPECTIVE JUROR: I'm a public safety
19 officer at Long Island University, CW Post Campus.

20 THE COURT: Are you married?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Does your spouse work?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: What does he or she do?

25 PROSPECTIVE JUROR: Self-employed at county

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1 building, title examiner.

2 THE COURT: Do you have children?

3 PROSPECTIVE JUROR: Two boys.

4 THE COURT: Grown?

5 PROSPECTIVE JUROR: Grown.

6 THE COURT: What do they do?

7 PROSPECTIVE JUROR: One is a CPA, and the
8 other one is a computer programmer.

9 THE COURT: How do you like to spend your
10 spare time?

11 PROSPECTIVE JUROR: Friends and family.

12 THE COURT: Social media?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Can you avoid it if picked as a
15 juror?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Ms. Serwitz, what town?

18 PROSPECTIVE JUROR: Great Neck, New York.

19 THE COURT: For how long?

20 PROSPECTIVE JUROR: Twenty-six years.

21 THE COURT: Highest level of school?

22 PROSPECTIVE JUROR: Three years of college.

23 THE COURT: Do you work?

24 PROSPECTIVE JUROR: I'm a publicist for a
25 filming maker.

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1 THE COURT: Are you married?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Significant other?

4 PROSPECTIVE JUROR: No, not now.

5 THE COURT: Do you have any children?

6 PROSPECTIVE JUROR: No.

7 THE COURT: How do you like to spend your
8 spare time?

9 PROSPECTIVE JUROR: Friends, family.

10 THE COURT: Social media?

11 PROSPECTIVE JUROR: No.

12 MR. BERGER: I missed the spare time answer.

13 PROSPECTIVE JUROR: Friends, family.

14 THE COURT: Up to Ms. Rios, in which town do
15 you reside?

16 PROSPECTIVE JUROR: Greenport.

17 THE COURT: How long?

18 PROSPECTIVE JUROR: Nineteen years.

19 THE COURT: Highest level of school?

20 PROSPECTIVE JUROR: Currently in college, but
21 I guess high school.

22 THE COURT: Currently in college, getting in
23 the way of you taking classes?

24 PROSPECTIVE JUROR: Last week after school.

25 Next week on Tuesday. Tuesday at night.

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1 THE COURT: You go at night?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: You could go even if you are
4 picked as a juror?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Do you work in addition to going
7 to school?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What do you do?

10 PROSPECTIVE JUROR: Receptionist at a
11 commissary.

12 THE COURT: Within the school?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Significant other?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Any children?

19 PROSPECTIVE JUROR: No.

20 THE COURT: How do you like to spend your
21 spare time, other than going to school and working?

22 PROSPECTIVE JUROR: Studying.

23 THE COURT: Social media?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Can you avoid it if you are

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1 picked?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: I want to be very clear and make
4 sure we're not getting in the way of what you need to
5 do. You have no problem sitting here for the days I've
6 stated based on your school schedule?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Ms. Olenick, what town?

9 PROSPECTIVE JUROR: Oceanside.

10 THE COURT: How long?

11 PROSPECTIVE JUROR: Eleven years.

12 THE COURT: Highest level of school?

13 PROSPECTIVE JUROR: Bachelor's degree.

14 THE COURT: In what?

15 PROSPECTIVE JUROR: Business administration.

16 THE COURT: Do you work?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: What do you do?

19 PROSPECTIVE JUROR: HR manager for a wine
20 distributor system.

21 THE COURT: Are you married?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: What does your spouse do?

24 PROSPECTIVE JUROR: He works for Metro North
25 Railroad.

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1 THE COURT: Any children?

2 PROSPECTIVE JUROR: Yes, two. One grown and
3 one school age.

4 THE COURT: The one grown, what does he/she
5 do?

6 PROSPECTIVE JUROR: Finishing up his college
7 education at the University of Buffalo.

8 THE COURT: How do you like to spend your
9 spare time?

10 PROSPECTIVE JUROR: Family, friends.

11 THE COURT: Can you avoid social media?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Ms. Canady, what town?

14 PROSPECTIVE JUROR: Hempstead.

15 THE COURT: How long have you been there?

16 PROSPECTIVE JUROR: Thirteen years.

17 THE COURT: Highest level of school?

18 PROSPECTIVE JUROR: Twelfth.

19 THE COURT: Do you work, ma'am?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: What do you do?

22 PROSPECTIVE JUROR: Retail.

23 THE COURT: Are you married?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: What does your spouse do?

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1 PROSPECTIVE JUROR: Right now, nothing.

2 THE COURT: Any children?

3 PROSPECTIVE JUROR: Three.

4 THE COURT: Grown or school age?

5 PROSPECTIVE JUROR: Grown and school age. I
6 have one graduating this year, one looking for work and
7 one HHA, a home health aide.

8 THE COURT: How do you like to spend your
9 spare time?

10 PROSPECTIVE JUROR: Grand kids.

11 THE COURT: Social media?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Ms. Candelo, what town?

14 PROSPECTIVE JUROR: Valley Stream.

15 THE COURT: How long?

16 PROSPECTIVE JUROR: Over thirteen years.

17 THE COURT: Highest level of school?

18 PROSPECTIVE JUROR: High school.

19 THE COURT: Do you work, ma'am?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What do you do?

22 PROSPECTIVE JUROR: Registered dental
23 assistant.

24 THE COURT: Are you married?

25 PROSPECTIVE JUROR: Yes.

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1 THE COURT: Spouse work?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: What does he or she do?

4 PROSPECTIVE JUROR: Aircraft technician for
5 American Airlines.

6 THE COURT: Any children?

7 PROSPECTIVE JUROR: I have four girls.

8 THE COURT: Grown or school age?

9 PROSPECTIVE JUROR: Different ages.

10 THE COURT: The ones out of school, tell me.

11 PROSPECTIVE JUROR: Twenty-one year old in
12 the Marines. I have eleven, ten and a one-year old.

13 THE COURT: Other than taking care of those
14 girls and you working, what else do you like to do with
15 your spare time?

16 PROSPECTIVE JUROR: Spare time, soccer, Girl
17 Scouts because the children use up the spare time.

18 THE COURT: Are you on social media?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Can you avoid it if you are
21 picked as a juror?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Here's what will happen now, as
24 you can see. There are only a few left. It is late in
25 the day. What I'm about to tell you, think of maybe

1 bad, but I like to say it's a blessing and a curse.
2 Here's the bad part, you have to be back here in the
3 courtroom tomorrow morning at 9:30. That's the bad
4 part. Here's the good part, once we're done with you
5 tomorrow, you are done for the day. It's supposed to
6 be sunny and nice out. You will get credit for a full
7 day of jury duty and probably only need you for about
8 an hour's time. If you could all please make sure you
9 are here by 9:30, the latest. I want to get started as
10 soon as you are all here.

11 The officer will tell you where to report as
12 early as you can and close to 9:30 as you can. Parking
13 is really tough around here. The earlier you get here,
14 the better. Tomorrow morning when you do get here,
15 each of the attorneys will be given a chance to ask you
16 questions. We'll go through that process. You have
17 been patiently watching all day. Then we'll figure out
18 if any of you will be picked as jurors.

19 When you leave here tonight, keep an open
20 mind throughout the process. Don't discuss the case
21 amongst yourselves or with anyone else. Don't permit
22 anyone to discuss the case in your presence. If you
23 run into any of us, the lawyers, the court staff, the
24 defendant, between now and tomorrow, we'll ignore you.
25 Don't talk to us. We won't talk to you.

1 Don't go visit the place where the alleged
2 crime was allegedly committed. Do not go Google to
3 research this case. You are not allowed to do it.
4 Don't look it up. You can only get the evidence from
5 the courtroom.

6 See you all tomorrow morning at 9:30. I want
7 you to ask the officers first. I'm sure they will be
8 able to answer your questions. See you tomorrow
9 morning at 9:30 sharp, please.

10 I ask you to be here at 9:15. You have to be
11 here before we bring up Mr. Ramos. I do not want to
12 wait before 9:30 to do that. I want to get as close to
13 9:30 as possible. Be here before 9:15.

14 Mr. Perri, anything for the record?

15 MR. PERRI: No, your Honor.

16 MR. BERGER: No, your Honor.

17 (Whereupon, the trial was adjourned to May 7,
18 2015.)

19 * * *

20

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22

23

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25

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

7 -----X

8 May 7, 2015
262 Old Country Road
9 Mineola, New York

10
11 B E F O R E:

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13
14 A P P E A R A N C E S:

15 (As Previously Noted)

16 * * * * *

17

18 THE CLERK: Case on trial continued,
19 Indictment Number 742N of 2014, People of the State of
20 New York vs. Daniel Ramos. All parties are present.
21 The jury is not present at this time.

22 People ready?

23 MR. PERRI: Yes, your Honor.

24 THE CLERK: Defense counsel ready?

25 MR. BERGER: I need to put something on the

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1 record at this time.

2 THE COURT: Go ahead.

3 MR. BERGER: I know from defense point of
4 view, for the trial, I have four more names to add to
5 the potential witness list I only learned of recently.

6 THE COURT: Go ahead.

7 MR. BERGER: M-A-R-C-E-L, Hernandez, David
8 Ramos, Junea Antonia Algueta, A-L-G-U-E-T-A.

9 Judge, I notice that Mr. Perri said some
10 supervisor from the NICE company. Is there a name?
11 Why can't a name be given here if you are asking for
12 names.

13 THE COURT: I imagine what happens is with
14 all of these large companies, they have a certain pool
15 of people that testify, depending what the day is.
16 They don't always send the same person.

17 Mr. Perri, when you get a name, I'll ask you
18 to please disclose that as soon as they give you a
19 definitive name.

20 MR. PERRI: Yes, your Honor.

21 THE COURT: Similar to the phone company, you
22 don't know until they decide who they are shipping out.
23 As soon as you get the name, let us know.

24 MR. PERRI: Yes, your Honor.

25 THE COURT: Anything else for the record?

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1 MR. PERRI: No, your Honor.

2 (Whereupon, the panel entered the courtroom.)

3 THE CLERK: Do both sides stipulate the
4 jurors are seated properly in the box?

5 MR. PERRI: Yes, your Honor.

6 MR. BERGER: Yes, your Honor.

7 THE COURT: Good morning. Thank you for
8 being back here with us this morning. We'll get right
9 into the questioning by the attorneys. Let me remind
10 you nothing the attorneys say is evidence. This is the
11 point in time where they will speak to you to determine
12 whether or not you are an appropriate juror for this
13 case.

14 MR. PERRI: Thank you, your Honor.

15 Defense counsel, ladies and gentlemen, thank
16 you for coming back for day two. I'm Anthony Perri,
17 assistant district attorney assigned to the case by the
18 Acting District Attorney Madeline Singas. I'm
19 representing the government in the prosecution of this
20 case. In addition to saying thank you, again, I want
21 to emphasize, defense counsel and the Judge have some
22 brief interactions. This is the only point in the
23 trial we get to talk to each of you. I get to ask you
24 questions and you get to voice your opinions. If you
25 are selected on the jury, it's much more a one-way

1 street to the very end. If there is anything you feel
2 you need to bring out or explain to the Court in
3 relation to any question to any juror, please do so.

4 As it has been said, I'm sure you heard back
5 in the courtroom, this is a case about child sex abuse.
6 The allegations are oral sex upon a six-year old girl.
7 Is there anyone here, based on the allegation, finds
8 that experience too painful or too close to home?

9 Ms. Zozzaro.

10 PROSPECTIVE JUROR: It's actually Griffen.

11 I have a cousin that went through what the
12 defendant did, in a case like this.

13 MR. PERRI: Was that here in Nassau County?

14 PROSPECTIVE JUROR: No, in Georgia, but he is
15 a first cousin.

16 MR. PERRI: Do you feel having a family --
17 was he convicted?

18 PROSPECTIVE JUROR: No, he wasn't, but it's
19 still --

20 MR. PERRI: Would that affect your ability to
21 be fair and impartial?

22 PROSPECTIVE JUROR: I don't think so, no. I
23 didn't want to say I think. I remember from yesterday.

24 MR. PERRI: What were you trying to say
25 there? What is --

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1 PROSPECTIVE JUROR: It made more of emotions.
2 I was trying to keep my emotions out of it. That's all
3 I can think about last night, was my cousin. It went
4 in my mind, I got like anxiety over that. It's not
5 that --

6 MR. PERRI: Do you feel you would be able --
7 do you feel your cousin was dealt with fairly down in
8 Georgia?

9 PROSPECTIVE JUROR: No.

10 MR. PERRI: Will you be able to separate your
11 feelings? When you say, he wasn't dealt with fairly,
12 was that by the prosecutor's office and the police down
13 in Georgia?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Will you be able to separate your
16 feelings about what happened to your cousin in this
17 case?

18 PROSPECTIVE JUROR: No.

19 MR. PERRI: Anyone else? Ms. Rios.

20 PROSPECTIVE JUROR: Well, my sister, she
21 actually, she was in a case where I had to testify and
22 it was a similar case like this, and it happened in
23 Nassau County about five years ago.

24 MR. PERRI: When you say, your sister was
25 involved in a case, was she the victim, the complainant

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1 in that case?

2 PROSPECTIVE JUROR: Yes, she was the victim,
3 and my cousin was the defendant.

4 MR. PERRI: He also had to testify?

5 PROSPECTIVE JUROR: He.

6 MR. PERRI: Is that experience of your sister
7 and yourself being a witness in that trial, did it go
8 to trial?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: Witness at that trial, do you
11 feel you will be able to separate that from dealing
12 with this case?

13 PROSPECTIVE JUROR: I have had more time to
14 think about it and yes.

15 MR. PERRI: Now, was there a verdict in that
16 case?

17 PROSPECTIVE JUROR: Yes.

18 MR. PERRI: Were you satisfied with the
19 conduct of the police department in that case?

20 PROSPECTIVE JUROR: Yes.

21 MR. PERRI: Were you satisfied with the
22 conduct of the district attorney's office in that case?

23 PROSPECTIVE JUROR: Yes.

24 MR. PERRI: Can I ask how long ago this was?

25 PROSPECTIVE JUROR: About five years ago.

1 MR. PERRI: How old was your sister at that
2 time?

3 PROSPECTIVE JUROR: About 17.

4 MR. PERRI: Thank you. Anyone else?

5 Part of the case that the People are
6 intending to present to you is the fact there are going
7 to be a variety of witnesses. We talked about this
8 before, but there will be a child witness that will be
9 called to testify. It is the People's intention to put
10 them before you. Does anyone have a problem with a
11 child witness testifying, listening to their testimony,
12 evaluate them like any other witness?

13 Does anyone here believe that you can't trust
14 a child, just a matter of like a general rule, you
15 can't trust a child's testimony?

16 Ms. Candelo, do you believe that a child is
17 capable of telling the truth?

18 PROSPECTIVE JUROR: Yes.

19 MR. PERRI: Do you think you could find your
20 child and testimony, use your common sense and credible
21 and believe their testimony?

22 PROSPECTIVE JUROR: Yes.

23 MR. PERRI: Ms. Serwitz?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: Do you believe that's possible?

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1 PROSPECTIVE JUROR: Yes.

2 MR. PERRI: Mr. Plactere?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: In evaluating whether it's a
5 child or adult, in evaluating witnesses' testimony,
6 would you be examining their demeanor, how they present
7 themselves?

8 PROSPECTIVE JUROR: Not the demeanor.
9 Whatever answers he or she gives out to the Court.

10 MR. PERRI: And would you be looking for
11 consistency?

12 PROSPECTIVE JUROR: Yes.

13 MR. PERRI: Would you have to like a witness
14 in order to believe them?

15 PROSPECTIVE JUROR: I can't judge a witness
16 on who the person might be, what he or she looks like.
17 Just by whatever answers he or she gives is what I have
18 to go by.

19 MR. PERRI: Ms. Olenick, is likability
20 different than credibility for a person?

21 PROSPECTIVE JUROR: Is likability different
22 than credibility?

23 MR. PERRI: Do you have to like someone in
24 order to believe them?

25 PROSPECTIVE JUROR: No.

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1 MR. PERRI: Ms. Canady?

2 PROSPECTIVE JUROR: No.

3 MR. PERRI: As part of your role as jurors in
4 this case is that you will be called on to deliberate
5 and the process of deliberations is not an easy one.
6 As the triers of the facts, you have to come to an
7 agreement as to whether or not the People met their
8 burden. The first step, the Judge will instruct you at
9 the end of the case. It is the People's burden to
10 prove this case beyond a reasonable doubt.

11 Ms. Serwitz, are you comfortable? Will you
12 accept and follow the Judge's instruction that the
13 People have to prove their case to a reasonable doubt?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Would you require -- could you
16 get rid of any possible doubt you have in your mind?

17 MR. BERGER: I object. The standard is
18 reasonable doubt. You will charge that. Rather than
19 discuss the other, what it is not, all I ask is that
20 the jury follow what it is, what your instructions are.

21 THE COURT: As I have said to you, nothing
22 that is said here is evidence. You will get the rules
23 of law from me. We had this line of questioning
24 throughout. I'll allow you to continue.

25 PROSPECTIVE JUROR: I don't understand your

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1 question.

2 MR. PERRI: Would you require the People
3 prove their case to an absolute certainty?

4 MR. BERGER: I don't understand if you
5 sustained --

6 THE COURT: No, it's overruled.
7 You may continue, People.

8 MR. PERRI: Would you require the People to
9 prove their case to an absolute certainty for you to
10 feel comfortable for finding a verdict in this case?

11 PROSPECTIVE JUROR: To be one hundred percent
12 sure, no doubt whatsoever.

13 MR. PERRI: Would you require that of the
14 People?

15 PROSPECTIVE JUROR: Yes.

16 MR. PERRI: Even if the Judge instructed you
17 that is not the standard that the People are held to?

18 PROSPECTIVE JUROR: I don't understand.

19 THE COURT: As I stated during my talk with
20 you, I have no doubt you might have forgotten it.
21 There is a burden of proof the People must meet in this
22 case and that burden of proof is proof beyond a
23 reasonable doubt, and let me read this to you:

24 A reasonable doubt is an honest doubt of the
25 defendant's guilt for which it exists. It is based

1 upon the nature and quality of the evidence. It's an
2 actual doubt, not an imaginary doubt. It's a doubt
3 that a reasonable person acting in a matter of this
4 importance would be likely to entertain because of the
5 evidence that was presented or because of the lack of
6 convincing evidence.

7 I read that to you because of the following:
8 The law recognizes in dealing with human affairs there
9 are very few things in this world that we know with
10 absolute certainty. Therefore, the law does not
11 require the People to prove a defendant guilty beyond
12 all possible doubt. On the other hand, it is not
13 sufficient to prove that the defendant is probably
14 guilty in a criminal case. The proof of guilt must be
15 stronger than that, meaning, probable. It must be
16 beyond reasonable doubt.

17 MR. PERRI: Would you be able to follow the
18 Judge's instructions?

19 PROSPECTIVE JUROR: Yes.

20 MR. PERRI: Ms. Candelo, would you be able to
21 follow the Judge?

22 PROSPECTIVE JUROR: Yes.

23 MR. PERRI: Ms. Canady?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: Ms. Olenick?

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1 PROSPECTIVE JUROR: Yes.

2 MR. PERRI: Ms. Graziosi?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Mr. Plactere?

5 PROSPECTIVE JUROR: Yes.

6 MR. PERRI: While in deliberations, one of
7 the processes that has to go on, you will be discussing
8 the case, discussing the evidence and at the same time,
9 not just voting the majority rules and we'll go into
10 that and get you out of here. You have to come to your
11 own individual determination as to whether or not the
12 People have proven the case beyond a reasonable doubt
13 and vote on your individual conscious.

14 Do you feel, Ms. Serwitz, you are capable of
15 deciding the case on your own, but still deliberating,
16 discussing the case?

17 PROSPECTIVE JUROR: One hundred percent.

18 MR. PERRI: If you were in the minority of
19 the jury panel, disagreed with the majority, what would
20 you do when interacting with the other jurors to argue
21 your side of the case?

22 PROSPECTIVE JUROR: I would try to be. I
23 would, and I am very analytical. I think I would break
24 it down and explain to somebody exactly how I see and
25 what I see. Perhaps, they're not seeing something I

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1 see, and that's the best I can do.

2 MR. PERRI: Ms. Canady, if you were the
3 minority to convince other jurors of your position,
4 what would you do in that situation?

5 PROSPECTIVE JUROR: Explain how I feel about
6 it and hope they go with it.

7 MR. PERRI: Would you rely on the evidence in
8 the case?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: Would you, if you felt you wanted
11 to see a piece of evidence, would you ask to see it
12 again?

13 PROSPECTIVE JUROR: Yes, if I had some
14 doubts, yes, I would.

15 MR. PERRI: And Ms. Graziosi, would you
16 handle deliberations in a case?

17 PROSPECTIVE JUROR: I would make sure I heard
18 every possible angle of the piece of evidence, or
19 whatever it was I had a doubt about so I could evaluate
20 my opinion.

21 MR. PERRI: If deliberations went on for a
22 day, two days, would you, in the minority, vote for the
23 majority and go home?

24 PROSPECTIVE JUROR: No, I would be
25 frustrated.

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1 MR. PERRI: Being a juror is not easy sitting
2 through a criminal case, whether it is the judge or the
3 attorneys, it is not an easy process and takes a lot of
4 time. I understand you would be willing to continue
5 forward rather than conceive whatever your --

6 PROSPECTIVE JUROR: Yes, you have to. That's
7 your responsibility too.

8 MR. PERRI: Mr. Plactere, could you go
9 forward?

10 PROSPECTIVE JUROR: Yes.

11 MR. PERRI: Ms. Serwitz?

12 PROSPECTIVE JUROR: Yes.

13 MR. PERRI: Ms. Candelo?

14 PROSPECTIVE JUROR: Yes.

15 MR. PERRI: Ms. Canady?

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: Ms. Olenick?

18 PROSPECTIVE JUROR: Yes.

19 MR. PERRI: A few other questions. You
20 offered to the Judge, Ms. Canady, you work in retail
21 where?

22 PROSPECTIVE JUROR: Toys-R-Us, Carle Place.

23 MR. PERRI: How long?

24 PROSPECTIVE JUROR: Two years.

25 MR. PERRI: Before that, where did you work?

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1 PROSPECTIVE JUROR: Lord & Taylor.

2 MR. PERRI: Ms. Olenick, you work in HR for a
3 wine distributor?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: How long?

6 PROSPECTIVE JUROR: Eleven years.

7 MR. PERRI: Ms. Rios, you worked at a -- you
8 were a receptionist at a commissary?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: What does that mean?

11 PROSPECTIVE JUROR: Commissary, where I take
12 orders from delis and food trucks, and I place the
13 orders and make invoices for them.

14 MR. PERRI: It's a private company that
15 supplies other companies with food?

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: I wasn't sure if it was military
18 or something like that.

19 How old is your child? You have one child?

20 PROSPECTIVE JUROR: Yes, 24.

21 MR. PERRI: What does she do?

22 PROSPECTIVE JUROR: Digital marketing.

23 MR. PERRI: Ms. Serwitz, you are a publicist
24 for a filmmaker?

25 PROSPECTIVE JUROR: Yes.

1 MR. PERRI: What are your responsibilities of
2 the job?

3 PROSPECTIVE JUROR: Casting, and I also reach
4 out to different organizations to share films.

5 MR. PERRI: How long have you been doing
6 this?

7 PROSPECTIVE JUROR: Five years.

8 MR. PERRI: Ms. Candelo, how long do you work
9 as a dental assistant?

10 PROSPECTIVE JUROR: Twelve years.

11 MR. PERRI: One of the concepts I want to
12 talk about, that the case that the People intend to put
13 forward with you, we believe we'll meet the burden
14 beyond a reasonable doubt. It is emphasized on the
15 facts, it is the whole case as the Judge instructed and
16 stated, again, here, that one of the most important
17 aspects of being a juror is keeping an open mind until
18 you heard all of the evidence. And that, Ms. Olenick,
19 would you agree it's important not to solely focus on
20 any one witness or any one item of evidence that the
21 People put forth?

22 PROSPECTIVE JUROR: Yes.

23 MR. PERRI: Instead of it being any one
24 individual, any one item, any one factor, this case
25 would be a multi-faceted, multipart case; would you

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1 agree with that?

2 PROSPECTIVE JUROR: Yes.

3 MR. PERRI: And Ms. Serwitz?

4 PROSPECTIVE JUROR: Yes.

5 MR. PERRI: Ms. Candelo, if you disagreed
6 with the credibility, would it be -- would it be over
7 for the People? Would you still look at the rest of
8 the evidence that comes before and after?

9 PROSPECTIVE JUROR: I would look at the rest
10 of the evidence that comes before and after.

11 MR. PERRI: Mr. Plactere, one witness you
12 didn't find credible, you didn't believe them, would
13 you write off the entire case, or still look at
14 everything?

15 PROSPECTIVE JUROR: As a citizen, I have to
16 look at everything. It's my duty to do that as a
17 juror.

18 MR. PERRI: Ms. Graziosi, when you remember
19 things, when any individual, in particular, you
20 remember things from the past, do you remember the
21 exact same way every single time?

22 PROSPECTIVE JUROR: The basics are there. It
23 might be certain things left out.

24 PROSPECTIVE JUROR: Aside from the basics,
25 the essential facts, the actions of your memory, are

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1 incidentals, other background information, stuff on
2 your peripheral that you might remember each time?

3 PROSPECTIVE JUROR: Maybe.

4 MR. PERRI: Your daughter is 24?

5 PROSPECTIVE JUROR: Yes.

6 MR. PERRI: Did she have her 16th birthday?

7 PROSPECTIVE JUROR: Yes.

8 MR. PERRI: Do you remember where the 16th
9 birthday was?

10 PROSPECTIVE JUROR: Yes.

11 MR. PERRI: Do you recall every single
12 person?

13 PROSPECTIVE JUROR: Mostly family and
14 friends, so yeah.

15 MR. PERRI: Sixteen for a girl is a bad
16 choice. I didn't have a sweet sixteen. You have a
17 sixteen, and now it is extremely special. How about a
18 17th birthday?

19 PROSPECTIVE JUROR: No.

20 MR. PERRI: How about an 18th birthday?

21 PROSPECTIVE JUROR: No.

22 MR. PERRI: Did she have a 17th birthday?

23 PROSPECTIVE JUROR: Probably. She didn't
24 have a party.

25 MR. PERRI: Did she have a birthday on the

1 18th year?

2 PROSPECTIVE JUROR: Not a party.

3 MR. PERRI: Do you remember where she was?

4 PROSPECTIVE JUROR: In college.

5 MR. PERRI: Ms. Olenick, in remembering
6 something from your past, something over a year ago, do
7 you remember every single aspect of all of the
8 background information of what happened?

9 PROSPECTIVE JUROR: Not always.

10 MR. PERRI: But you still could have a memory
11 of an event and each time you are retelling the story
12 it could be slightly different?

13 PROSPECTIVE JUROR: A little bit, yeah.

14 MR. PERRI: Would that little bit being
15 different each time, when remembering and explaining to
16 the person, would that mean you are lying?

17 PROSPECTIVE JUROR: No.

18 MR. PERRI: Ms. Canady, would you agree?

19 PROSPECTIVE JUROR: Yes.

20 MR. PERRI: Ms. Candelo, would you agree?

21 PROSPECTIVE JUROR: Yes.

22 MR. PERRI: Ms. Serwitz?

23 PROSPECTIVE JUROR: If I remember
24 something -- I have a good memory. I'm sure I remember
25 the way I told it the first time. I don't think it

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1 would change.

2 MR. PERRI: When you retell a story, there is
3 no deviation?

4 PROSPECTIVE JUROR: No.

5 MR. PERRI: I think most people operate that
6 same way.

7 PROSPECTIVE JUROR: I don't know.

8 MR. PERRI: In the same vain, the charges in
9 this case are jarring, they're traumatic, you will have
10 witnesses, civilians that will be testifying about
11 something that could be classified as traumatic events
12 that happened in their lives. They have to sit in
13 front of you and talk to a group of strangers and
14 repeat this, their narrative of what happened to each
15 and every one of you. Do you think, Mr. Plactere, does
16 everyone react in the same way?

17 PROSPECTIVE JUROR: Not at all.

18 MR. PERRI: Ms. Rios, do you think everyone
19 reacts in the same way?

20 PROSPECTIVE JUROR: No.

21 MR. PERRI: Do you think someone is being
22 untruthful because they don't react the same way you
23 do?

24 PROSPECTIVE JUROR: No.

25 MR. PERRI: Ms. Olenick, if someone reacts

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1 differently in a situation, it means they're not be
2 truthful?

3 PROSPECTIVE JUROR: No.

4 MR. PERRI: Ms. Canady?

5 PROSPECTIVE JUROR: No.

6 MR. PERRI: Ms. Serwitz?

7 PROSPECTIVE JUROR: No.

8 MR. PERRI: Ms. Candelo?

9 PROSPECTIVE JUROR: No.

10 MR. PERRI: Does anyone here think it's easy
11 to testify? Ms. Graziosi, do you think it's easy to
12 testify?

13 PROSPECTIVE JUROR: No.

14 MR. PERRI: Ms. Griffen, do you think it
15 would be easy to testify?

16 PROSPECTIVE JUROR: No.

17 MR. PERRI: Mr. Plactere?

18 PROSPECTIVE JUROR: No.

19 MR. PERRI: Ms. Serwitz?

20 PROSPECTIVE JUROR: No.

21 MR. PERRI: Thank you very much.

22 THE COURT: Mr. Berger.

23 MR. BERGER: You heard me ask my questions
24 yesterday. I'm going to try to -- is there anything
25 you want to bring to my attention first?

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1 Ms. Graziosi, you heard the Judge explain the
2 burden is on the prosecution to prove anything, and you
3 heard about emotional factors involved. Will they
4 affect you in any way, the possible emotional factors
5 that might happen in this case?

6 PROSPECTIVE JUROR: No.

7 MR. BERGER: I'm not sure I got from your
8 answer you feel you shouldn't sit here.

9 PROSPECTIVE JUROR: Should not sit here.

10 MR. BERGER: And Ms. Rios, you actually
11 participated in a case in which you obviously were
12 testifying for your sister?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERGER: Based upon that experience, do
15 you think you should be sitting in this case?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: I didn't quite understand your
18 answer. Thank you.

19 Do you think you have the ability to evaluate
20 the testimony of witnesses?

21 PROSPECTIVE JUROR: That's the only way to do
22 it.

23 MR. BERGER: Can you do it?

24 PROSPECTIVE JUROR: Yes.

25 MR. BERGER: I heard people say yesterday

1 there's people that can't do it. The rest of you all
2 feel you have the ability to critically evaluate
3 testimony of witnesses to do so?

4 PROSPECTIVE JUROR: Yes.

5 MR. BERGER: You have your own criteria,
6 Ms. Griffen?

7 Ms. Olenick, people have lied to you, have
8 they not?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: Mr. Perri wants you to say that
11 well, you tell a story differently. It doesn't
12 necessarily mean they are lying. You want to go
13 through all of that criteria. Somebody tells a story
14 differently. It could very well mean they're not
15 remembering what happened. Somebody gave the answer,
16 the basics. I'll remember. Yes, I would tell the
17 story the same way if the story was significant and
18 traumatic, and indeed it is. You will not remember the
19 details of something insignificant. I'm not going ask
20 you to tell me you are going to believe or disbelieve
21 the witnesses right here and now. We don't know what
22 is going to happen. We all know what it looks like
23 when somebody is not being truthful. Would you agree,
24 Ms. Candelo?

25 PROSPECTIVE JUROR: Yes.

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1 MR. BERGER: Does anybody here feel they
2 don't have the ability to critically evaluate a witness
3 to see if he or she is being truthful?

4 Ms. Canady, no guarantee? You are not
5 promising it is not going to be one hundred percent.
6 You looked at the people and heard them talk to you and
7 they haven't been truthful, correct?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: You feel you have that?

10 Ms. Griffen, if I don't ask you, it is just
11 to save some time.

12 PROSPECTIVE JUROR: I understand.

13 MR. BERGER: Do you recognize, Ms. Candelo,
14 it is the quality, not the quantity, correct?

15 PROSPECTIVE JUROR: It depends.

16 MR. BERGER: Ms. Rios?

17 PROSPECTIVE JUROR: Quality against quantity,
18 it has to be reviewed. I believe it would have to be
19 reviewed.

20 MR. BERGER: When analyzing the evidence, do
21 you believe it's the quality of that substance that
22 counts not how many witnesses that are called, correct?

23 PROSPECTIVE JUROR: In the evidence, the
24 quality between -- versus the quantity?

25 MR. BERGER: Yes.

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1 PROSPECTIVE JUROR: I don't understand.

2 MR. BERGER: Ms. Graziosi, do you understand
3 my question, that it's the quality of the evidence,
4 just because somebody testifies to something doesn't
5 mean it's true; would you agree?

6 PROSPECTIVE JUROR: Yeah.

7 MR. BERGER: It's the substance that counts,
8 not how many witnesses testify, or how long they
9 testify; would you agree?

10 PROSPECTIVE JUROR: For the most part, yeah.

11 MR. BERGER: Tell me why, the quantity as
12 opposed to the quality.

13 PROSPECTIVE JUROR: Well, if you had a ton of
14 people testifying and trying to gang up on that person,
15 that is not fair either. Maybe I'm not understanding
16 your question.

17 MR. BERGER: You could have one person
18 testify in a very credible and believable way and ten
19 people testify to the opposite. None of the ten may be
20 believable to you; one person might be credible, right?

21 PROSPECTIVE JUROR: Maybe.

22 MR. BERGER: You would be looking at the
23 substance of what they say, whether believable or not?

24 PROSPECTIVE JUROR: It's so out of context.
25 I can't apply it without more.

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1 MR. BERGER: How about you, Ms. Olenick, do
2 you understand my question about the quality, not the
3 quantity?

4 PROSPECTIVE JUROR: There has to be quality
5 to it and substance to it.

6 MR. BERGER: That's all I'm asking. If there
7 is testimony that has no quality to it, it's
8 meaningless.

9 PROSPECTIVE JUROR: I don't know that it
10 matters how many people testify.

11 MR. BERGER: It's what I'm asking. It's the
12 quality that counts; Ms. Canady?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERGER: Ms. Serwitz?

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: Do you understand now,
17 Ms. Candelo?

18 PROSPECTIVE JUROR: Yes.

19 MR. BERGER: Ms. Griffen?

20 PROSPECTIVE JUROR: A little bit.

21 MR. BERGER: Don't give me an answer you
22 think I want to hear. If you don't -- don't agree.
23 So, have you -- how do you feel now about the quality
24 not the substance, not how many testify.

25 PROSPECTIVE JUROR: That's true. You hope

1 it's consistent throughout.

2 MR. BERGER: You say you hope. Remember, I
3 made the point yesterday, because somebody swears to
4 tell the truth doesn't mean they're telling the truth.

5 PROSPECTIVE JUROR: Right.

6 MR. BERGER: I ask you to start at point
7 zero, ready to believe as to disbelieve.

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: When you hope they would be
10 truthful, you could hope, but that doesn't mean you
11 will get credible, believable testimony, right?

12 PROSPECTIVE JUROR: Right. Until you
13 evaluate the actual testimony you can't get the full
14 answer to that.

15 MR. BERGER: When you are evaluating, you
16 know what, I believe that. You know what, I don't
17 believe that.

18 PROSPECTIVE JUROR: That's where the quantity
19 and then quality comes in, like you said before.

20 THE COURT: One person can be more believable
21 than ten others, is what I'm saying.

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: Do you think, Ms. Canady,
24 innocent people have been accused of crimes?

25 PROSPECTIVE JUROR: Yes.

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1 MR. BERGER: You heard me give the example.
2 You hesitated for a minute. Any hesitation at all,
3 innocent people are accused of crimes?

4 PROSPECTIVE JUROR: No. You hear about it
5 every day.

6 MR. BERGER: Does anybody disagree with me
7 that you heard me make the point about percentages
8 yesterday? You may think 72 percent of the time
9 somebody is charged with a crime is guilty. That means
10 28 percent did not. We make a decision not based on
11 percentage, but based upon individual cases. You don't
12 know, 28 percent or 72 percent; does everybody disagree
13 with that?

14 Do you think a police officer ever lied,
15 Ms. Canady?

16 PROSPECTIVE JUROR: No.

17 PROSPECTIVE JUROR: Anybody could lie.

18 MR. BERGER: It's not a matter of could.
19 What I'm doing here, I'm getting your opinions. I'm
20 trying to find out what your experience, life
21 experience is. I'm asking you whether you think
22 anybody has actually gotten on the witness stand and
23 lied.

24 PROSPECTIVE JUROR: I have never witnessed
25 it, so I can't.

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1 MR. BERGER: Ms. Canady, do you feel anybody
2 the People have gotten on the witness stand can lie?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Do you think police officers
5 have?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Do you think police officers are
8 less likely to lie on the witness stand than a
9 civilian?

10 PROSPECTIVE JUROR: No.

11 MR. BERGER: Ms. Olenick, how about you?

12 PROSPECTIVE JUROR: No.

13 MR. BERGER: You would agree police officers
14 have lied on the witness stand, Ms. Serwitz?

15 PROSPECTIVE JUROR: I'm sure they have.

16 MR. BERGER: They are just like anybody else?

17 PROSPECTIVE JUROR: No, they don't get an
18 extra edge.

19 MR. BERGER: Ms. Graziosi, you understand
20 that?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERGER: Do you think, Mr. Plactere,
23 police officers have tricked or coerced somebody to
24 sign the statement when it wasn't their statement?

25 PROSPECTIVE JUROR: Do I believe?

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1 MR. BERGER: Does anybody disagree with that
2 answer, Ms. Graziosi?

3 PROSPECTIVE JUROR: I agree.

4 MR. BERGER: Ms. Candelo; do you agree?

5 PROSPECTIVE JUROR: I agree.

6 MR. BERGER: Do you understand as well,
7 Ms. Olenick, it's not important to determine why they
8 may have been untruthful, only if they are?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: Do you understand you are not
11 expected to be psychiatrists or psychologists, go into
12 the mindset of individuals? Do you think that you are
13 going to give an edge to a six-year old or seven-year
14 old who testifies because she is so young when she
15 testifies here; would you give an edge to her?

16 PROSPECTIVE JUROR: No.

17 MR. BERGER: More sympathetic to her?

18 PROSPECTIVE JUROR: No.

19 MR. BERGER: Would you view her as a witness,
20 the six or seven-year old? Would you be upset if I
21 vigorously cross-examined her?

22 PROSPECTIVE JUROR: No. You have to do that.

23 MR. BERGER: Because as we sit here now, he's
24 not innocent or guilty -- he's presumed innocent. You
25 don't know what the evidence is, correct?

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1 PROSPECTIVE JUROR: Correct.

2 MR. BERGER: Do you agree?

3 If you were sitting where the defendant is
4 charged with this crime, would you be satisfied with
5 twelve people with your present frame of mind judging
6 you? In other words, are you so fair as you sit here
7 now, that you don't care whether it will be a guilty
8 verdict or nothing? You are just as prepared to vote
9 not guilty as, in your frame of mind, so fair, would
10 you be satisfied with twelve Ms. Graziosi's judging
11 you?

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: Mr. Plactere, how about you?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: Ms. Serwitz?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: Ms. Candelo?

18 PROSPECTIVE JUROR: Yes.

19 MR. BERGER: Ms. Canady?

20 PROSPECTIVE JUROR: Yes.

21 MR. BERGER: Ms. Olenick?

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: You heard me make a point
24 briefly, Ms. Canady, no matter what evidence you hear
25 that is presented by the prosecution, that you wouldn't

1 say to yourself, I heard enough, the defendant is
2 guilty. Rather, you will keep an open mind, remember
3 what was said, what you saw, and keep an open mind
4 until the evidence is presented, until counsel makes
5 arguments, until the judge gives you the charge and
6 then you start to consider what your --

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: If you come to a quick
9 conclusion then everything you look at from that point
10 on will have that kind of slant. I'm not saying you
11 will do that.

12 Ms. Graziosi, do you understand my point
13 there?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: Ms. Graziosi, would you tell me
16 what newspapers and magazines?

17 PROSPECTIVE JUROR: New York Times. That's
18 about it.

19 MR. BERGER: Mr. Plactere?

20 PROSPECTIVE JUROR: Post.

21 MR. BERGER: Ms. Serwitz?

22 PROSPECTIVE JUROR: I don't read newspapers.

23 MR. BERGER: Ms. Candelo?

24 PROSPECTIVE JUROR: Newsday.

25 MR. BERGER: Ms. Canady?

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1 PROSPECTIVE JUROR: Newsday and Daily News.

2 MR. BERGER: Ms. Olenick?

3 PROSPECTIVE JUROR: I don't read the paper.

4 MR. BERGER: Finally, tell me if you have
5 bumper stickers. I'm not interested in politics.

6 Ms. Graziosi?

7 PROSPECTIVE JUROR: No.

8 MR. BERGER: Mr. Plactere?

9 PROSPECTIVE JUROR: It's not a bumper
10 sticker, it's a side sticker, side window.

11 PROSPECTIVE JUROR: Fordham University.

12 MR. BERGER: Ms. Serwitz?

13 PROSPECTIVE JUROR: No.

14 MR. BERGER: Ms. Candelo?

15 PROSPECTIVE JUROR: No.

16 MR. BERGER: Ms. Canady?

17 PROSPECTIVE JUROR: Just a magnet for my
18 children's school. Kenny doesn't drive.

19 MR. BERGER: Thank you very much.

20 THE COURT: Thank you.

21 At this point I'm going to have you all step
22 out for a few minutes while the attorneys have a chance
23 to make a determination as to who, if any, of you
24 remain as jurors. Listen to the instructions of the
25 officer. See you within five to ten minutes. Thank

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1 you.

2 (Whereupon, the jury panel exited the
3 courtroom.)

4 THE CLERK: Challenge for cause, jurors
5 numbers one or two?

6 MR. PERRI: People challenge juror number two
7 for cause.

8 MR. BERGER: Consent.

9 THE COURT: Granted.

10 THE CLERK: Defense counsel, any challenge
11 for cause, juror number one?

12 MR. BERGER: No.

13 THE CLERK: Do the People wish to exercise
14 perempt challenge as to juror one?

15 MR. PERRI: Yes, your Honor.

16 THE CLERK: People, have any challenge for
17 cause for jurors in seats three or six?

18 MR. PERRI: No, your Honor.

19 THE CLERK: Defense counsel, do you wish to
20 challenge for cause jurors seated in number three or
21 six?

22 MR. BERGER: No, your Honor.

23 THE CLERK: Do the People wish to exercise a
24 perempt challenge as to juror three or six?

25 MR. PERRI: People exercise perempt challenge

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1 to juror number six.

2 THE CLERK: Defense counsel, do you wish to
3 exercise a perempt challenge as to juror number three?

4 MR. BERGER: Yes.

5 THE COURT: Do the People have a challenge
6 for cause for jurors seated in number eight or ten?

7 MR. PERRI: No, your Honor.

8 THE CLERK: Defense counsel, any challenge
9 for cause for jurors eight or ten?

10 MR. BERGER: Yes, juror number eight.

11 THE COURT: She said at the very end, when
12 Mr. Berger asked, he wasn't clear whether or not she
13 should or should not sit on this case in light of the
14 fact she testified at her sister's trial. She said she
15 should not be seated on this case.

16 MR. PERRI: The People won't consent to that
17 removal, that when asked, although, she did have
18 emotions and a reaction and connection to this case
19 because of her role with her sister, she did
20 unequivocally say she could separate that and be fair
21 and impartial, and that if the Court -- just her saying
22 she shouldn't, that's a determination for the Court,
23 and there should be further inquiry, your Honor.

24 THE COURT: I'll grant the cause request on
25 this. I marked it on my papers at the moment she made

1 that statement to Mr. Berger.

2 THE CLERK: Do the People wish to exercise a
3 perempt challenge to juror ten?

4 MR. PERRI: No, your Honor.

5 THE CLERK: Defense counsel, do you wish to
6 perempt challenge juror ten?

7 MR. BERGER: No perempt.

8 THE CLERK: Rosemary Olenick will be juror
9 number eleven, agreed, People?

10 MR. PERRI: Yes, your Honor.

11 THE CLERK: Agreed, defense counsel?

12 MR. BERGER: Yes.

13 THE CLERK: People challenge for cause, juror
14 number eleven?

15 MR. PERRI: No, your Honor.

16 THE CLERK: Defense counsel, challenge for
17 cause number eleven?

18 MR. BERGER: No, your Honor.

19 THE CLERK: People wish to perempt challenge
20 juror eleven?

21 MR. PERRI: Yes, we exercise a peremptory
22 challenge for number eleven.

23 THE CLERK: People, have a challenge for
24 cause for juror fourteen?

25 MR. PERRI: No, your Honor.

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1 THE CLERK: Defense counsel, as to juror
2 fourteen?

3 MR. BERGER: No, your Honor.

4 THE CLERK: People, do you wish to exercise a
5 perempt for juror fourteen?

6 MR. PERRI: No, your Honor.

7 THE CLERK: Defense counsel, do you wish to
8 exercise a perempt challenge as to juror number
9 fourteen?

10 MR. BERGER: Yes.

11 THE COURT: While we're waiting for the jury,
12 let me go on the record and let you know, yesterday, we
13 got a call from the clerk that the woman we swore in as
14 juror number seven, after being sworn in and leaving
15 here seemingly fine, she went back across the street
16 and expressed dismay in being a juror. As of right now
17 she has been told by the court personnel that she needs
18 to be here on Monday. She needs to report on Monday.
19 That's the end of it. However, I'm now anticipating we
20 might be getting a letter, or some sort of a note or
21 whatever from this juror. In light of that, we'll pick
22 three alternates. I ask you each look at the first
23 alternate as someone that could potentially replace
24 juror number seven, if we need to get that far. It
25 will not be my intention to declare a mistrial and

1 start all over. We haven't done anything yet, so we
2 will make that call prior to my comments and your
3 opening statements. Please keep that in mind when
4 picking. We'll be picking three alternates.

5 (Whereupon the jury panel entered the
6 courtroom.)

7 THE CLERK: Jurors, may I have your attention
8 please. If I call your name, you have been selected to
9 serve on this jury.

10 Juror number eleven will be Rosemary Olenick.
11 The rest of you are excused with the thanks of the
12 Court. Please be careful. You will be directed where
13 to report and Ms. Olenick, please remain seated.

14 Is the remaining juror satisfactory to the
15 People?

16 MR. PERRI: Yes, your Honor.

17 THE CLERK: Is the remaining juror
18 satisfactory to the defense counsel?

19 MR. BERGER: Yes, your Honor.

20 (Whereupon, the juror was duly sworn by the
21 clerk of the court.)

22 THE COURT: As you know from what happened
23 yesterday, you will be excused now for today. You have
24 the rest of the day to do whatever you like. I do need
25 you back here in court Monday morning at 9:30 sharp.

1 The officers will tell you where to report. Don't come
2 into the courtroom.

3 At this point I need to give admonitions
4 again. Follow them from now until the end of this
5 case. Keep an open mind throughout the trial. Do not
6 discuss the case amongst yourselves when you see your
7 other jurors, or with anyone else during this trial.

8 Do not permit anyone to discuss the case in
9 your presence. Do not talk to the lawyers, witnesses
10 or the defendant about anything during the trial. And
11 remember, if we run into you anywhere, we're all going
12 to ignore you. Please don't take it personally.

13 Do not visit the place where the charged
14 crime was allegedly committed or any other place
15 involved in this case. If there is any news coverage
16 of this case, do not read, view, or listen to any
17 accounts, discussions of the case reported by the news
18 media.

19 Do not attempt to research any issue or law
20 related to this case whether by discussion with others,
21 by research in the library or Internet, or by any other
22 means or source.

23 Have a great weekend. We'll see you Monday
24 morning. Thank you.

25 (Whereupon, the selected juror exited the

1 courtroom.)

2 THE COURT: We called for another panel.
3 We're getting fifty jurors to come over. That will
4 take a little while. We get a short break for that.
5 Just so you know, I'm going to curtail my initial
6 comments to this new panel in light of the fact we're
7 picking one or three alternates. They're going to get
8 basically the same information I've given the other two
9 panels, without all of the details in an effort to try
10 to move this along so we can get through these fifty
11 individuals today.

12 MR. PERRI: Yes, your Honor.

13 THE COURT: Any issue with that?

14 MR. BERGER: How long do you think?

15 THE COURT: Probably about twenty minutes or
16 so.

17 MR. PERRI: Thank you.

18 (Whereupon, a short recess was taken.)

19 THE CLERK: Case on trial continued, 742N of
20 2014, the People of the State of New York vs. Daniel
21 Ramos.

22 Let the record reflect all parties are
23 present. The jury is not present at this time. Are
24 the People ready to proceed?

25 MR. PERRI: Yes, your Honor.

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1 THE CLERK: Defense counsel?

2 MR. BERGER: Yes.

3 THE COURT: We're going to bring in a new
4 panel. Just so everyone is aware, I believe you have
5 one perempt left. Mr. Berger, you have three perempts
6 left. We're picking one more juror, juror number
7 twelve, and three more alternates. Let's bring in the
8 jury, please.

9 What's the first name of the last witness you
10 added?

11 MR. BERGER: Juana, J-U-A-N-A, Arquetta.

12 (Whereupon, the jury panel entered the
13 courtroom.)

14 THE CLERK: Good morning. Welcome to County
15 Court, Supreme Court, Part 43, before the Honorable
16 Teresa K. Corrigan. At this time I ask you to stand
17 and raise your right hands so I may swear you in.

18 (Whereupon, the jury panel was duly sworn by
19 the clerk of the court.)

20 THE COURT: Good morning, everyone. Welcome,
21 again, to County Court complex. This is Part 43. As
22 you heard, my name is Teresa Corrigan. I'll be the
23 judge in this matter today. We're in the process of
24 picking a jury in a criminal case, and it's estimated
25 that this trial will take approximately two weeks

1 scattered over the next three weeks giving you days off
2 in between. I will give you a more complete schedule
3 in a few moments.

4 I do want to just take a moment to thank you
5 all for being here. I recognize and realize for many
6 of you it could be an inconvenience. This is our
7 criminal justice system. This is how we operate here,
8 and it really is the best system out there as far as
9 making a determination when someone is accused of a
10 crime.

11 The name of this case is called the People of
12 the State of New York vs. Daniel Ramos, and so you
13 know, the People of the State of New York means the
14 government of the State of New York, and in this case
15 the government is represented by the Acting District
16 Attorney of Nassau County, Madeline Singas.

17 In referring to the People of the State of
18 New York, that is in referring to the government, you
19 are going to hear us use the shorthand terminology of
20 the People. That part of the title of the case refers
21 to the People of the State of New York. It does not
22 mean that the People of this state want any particular
23 verdict. The People of the state are satisfied about
24 the just verdict of a fair jury.

25 Mr. Ramos will be referred to often times as

1 the defendant in this matter. And so you know up
2 front, he is charged with two crimes.' The first is
3 criminal sexual act in the first degree, and the second
4 is endangering the welfare of a child.

5 Now, as I stated, we're in the middle of jury
6 selection. We already have eleven jurors picked. That
7 means from all of you, we're looking for one additional
8 juror, plus three alternates.

9 So you know, an alternate juror is one who
10 may serve in place of one of the first twelve jurors,
11 should presently an unforeseen extraordinary emergency
12 arise that makes it totally impossible for one of the
13 first twelve jurors to complete the trial.

14 Now, you may realize if you served on a jury
15 before, jury selection is different in each courtroom
16 you go into, so you have to understand my process and
17 my procedure.

18 The first thing I explain is the basic
19 principles of law to you that apply in all criminal
20 trials. I do this in part if you are selected as a
21 juror, you will be required to follow the law, whether
22 you agree with it or not.

23 Second, I'm going to call fourteen, or the
24 clerk is going to call fourteen names at random. You
25 will come up here and sit in the jury box, which is to

1 my left and at that point I'll ask you each questions
2 that you respond to either by raising your hands or by
3 giving me a verbal response, and I'll guide you as to
4 what is needed. When I'm done asking you questions,
5 each of the attorneys will have an opportunity to
6 question you also.

7 Let me introduce the parties to you. Later
8 in the proceedings, I'll ask you if you believe you
9 know any of the individuals that I introduced.

10 Now, the defendant in this case, as you heard
11 me say, is Mr. Daniel Ramos. He's represented by
12 Mr. Michael Berger. In this case the People are
13 represented by the Acting DA of Nassau County, which is
14 Madeline Singas, and she is in turn represented by
15 Assistant District Attorney Anthony Perri.

16 Now, the purpose of the trial is for the jury
17 to decide on the basis of the evidence presented in the
18 courtroom, whether a person who is accused of a crime
19 by the People is guilty or not guilty of that crime.

20 So in a trial, it is the juries
21 responsibility to evaluate fairly the testimony and
22 other evidence presented here in the courtroom, and to
23 decide what the believable and accurate facts are with
24 respect to what, if anything, took place at the time
25 and place in question. The jury is, therefore, also

1 known as the finder of the facts.

2 After the chosen and sworn jury has
3 determined the facts, the jury must apply to those
4 facts the law as I explained it to you. Regardless of
5 whether the jury agrees with the law, and then without
6 fear, favor, bias, prejudice, sympathy, or
7 consideration of a possible sentence or punishment,
8 render a decision known as a verdict, stating whether
9 the defendant is guilty or not guilty of a charged
10 crime.

11 You heard me say your job is to decide the
12 believable evidence in this case. It's important for
13 you to know what the evidence is for you to do that
14 job. There are three basic types of evidence.

15 First, there is evidence that comes from a
16 stipulation of the parties. A stipulation is
17 information that both parties agree to present to the
18 jury as evidence, without calling a witness to testify
19 to the information. There is also evidence that comes
20 from the introduction into evidence of physical
21 objects, such as documents, photographs, clothing, or
22 even a chart.

23 And finally, as you know, the most common
24 form of evidence is the testimony of people based on
25 questions primarily asked by the lawyers and sometimes

1 asked by the Court.

2 So, then what is not evidence? First, the
3 charges in this case are set forth in a document known
4 as an indictment. The indictment is simply a piece of
5 paper that states the charges. Neither the indictment
6 itself, nor the fact that the indictment has been
7 filed, constitutes evidence.

8 The defendant has pleaded not guilty to the
9 charges contained in the indictment, and this trial is
10 to decide whether the defendant is guilty or not
11 guilty.

12 Second, what the lawyers and I say at any
13 point in time, is not evidence. None of us are
14 witnesses.

15 And third, a question of a witness by a
16 lawyer or by the Court, is by itself not evidence. It
17 is the question with the answer that is the evidence.
18 So therefore, you are not to conclude from a question
19 alone that anything assumed in the question to be true,
20 is true, no matter how detailed or specific the
21 question is. Nor are you to draw any inference either
22 favorable or unfavorable to either side from the
23 content of a question alone. You must consider the
24 question with the witness's answer and decide whether
25 you find the answer believable and accurate because,

1 again, it is the question with the answer that is the
2 evidence.

3 Now, there are three fundamental principles
4 of law that you must agree to follow if you are chosen
5 as a juror in this matter, and they are as follows:

6 The presumption of innocence, the burden of
7 proof, and the requirement of proof beyond a reasonable
8 doubt. Throughout these proceedings, the defendant is
9 presumed to be innocent. As a result, you must find
10 the defendant not guilty unless on the evidence
11 presented at this trial, you conclude that the People
12 have proven the defendant guilty beyond a reasonable
13 doubt. That a defendant does not testify as a witness
14 is not a factor from which any inference unfavorable to
15 the defendant may be drawn. The defendant is not
16 required to prove that he is not guilty. In fact, the
17 defendant is not required to prove or disprove
18 anything.

19 To the contrary, the People have the burden
20 of proving the defendant guilty beyond a reasonable
21 doubt. That means, before you can find the defendant
22 guilty of a crime, the People must prove beyond a
23 reasonable doubt every element of the crime, including
24 that the defendant is the person who committed that
25 crime.

1 The burden of proof never shifts from the
2 People to the defendant. If the People fail to satisfy
3 their burden of proof, you must find the defendant not
4 guilty. If the People satisfy their burden of proof,
5 you must find the defendant guilty.

6 Now, the law uses the term proof beyond a
7 reasonable doubt to tell you how convincing the
8 evidence of guilt must be to permit a verdict of
9 guilty. The law recognizes in dealing with human
10 affairs there are very few things in this world we know
11 with absolute certainty. Therefore, the law does not
12 require the People to prove a defendant guilty beyond
13 all possible doubt.

14 On the other hand, it is sufficient to prove
15 that the defendant is probably guilty in a criminal
16 case. The proof of guilt must be stronger than that.
17 It must be beyond a reasonable doubt.

18 A reasonable doubt is an honest doubt of the
19 defendant's guilt for which a reason exists based upon
20 the nature and quality of the evidence. It is an
21 actual, not an imaginary doubt. It's a doubt a
22 reasonable person acting in a matter of this importance
23 would be likely to entertain because of the evidence
24 presented or because of the lack of convincing
25 evidence.

1 Proof of guilt beyond a reasonable doubt is
2 proof that leaves you so firmly convinced of the
3 defendant's guilt that you have no reasonable doubt of
4 the existence of any element of crime, or of the
5 defendant's identity as the person who committed that
6 crime.

7 If you are not convinced beyond a reasonable
8 doubt that the defendant is guilty of a charged crime,
9 you must find the defendant not guilty of that crime.

10 If you are convinced beyond a reasonable
11 doubt that defendant is guilty of a charged crime, you
12 must find the defendant guilty of that crime.

13 Now, because this is a criminal case, the
14 police are involved and will be testifying at trial.
15 We treat police officers the same way as we do civilian
16 witnesses. Police officers can tell the truth, be
17 mistaken, or lie just like anyone else. You must
18 evaluate a police officer's testimony for truthfulness
19 and accuracy in the same way you would evaluate the
20 testimony of any other witness.

21 Let me talk to you briefly about
22 deliberations, the jury's verdict, whether guilty or
23 not guilty, it must be unanimous. Each and every juror
24 must agree to the verdict. Since twelve people seldom
25 agree immediately on anything to reach a verdict, you

1 must deliberate with the other jurors.

2 What does it mean to deliberate? It means
3 you should consult with each other, listen to each
4 other, give each other's view careful consideration and
5 reason together when considering the evidence. And
6 when you do deliberate, you should do so with the view
7 towards reaching an agreement, if that can be done
8 without surrendering individual judgment.

9 Each of you must decide the case yourself,
10 but only after a fair and impartial consideration of
11 the evidence with the other jurors. You should not
12 surrender an honest view of the evidence simply because
13 you want the trial to end or you are outvoted.

14 At the same time, you should not hesitate to
15 reexamine your views and change your opinions, if you
16 become convinced that they were not direct.

17 At this time the clerk will call fourteen
18 names at random, have you come to the front of the
19 courtroom.

20 THE CLERK: If your name is called, gather
21 your personal belongings. Step up and follow the
22 instructions of the court officer.

23 Byron Ortega. First name B-Y-R-O-N. Last
24 name spelled O-R-T-E-G-A, seat number one.

25 Seat number two, Lauren Mastro, M-A-S-T-R-O.

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1 Seat number three, Thomas F. Rubinic,
2 R-U-B-I-N-I-C.

3 Seat number four, Lawrence S. Fischer,
4 F-I-S-C-H-E-R.

5 Seat number five, Susan M. Philben,
6 P-H-I-L-B-E-N.

7 Seat number six, Charles M. Noble, N-O-B-L-E.
8 Neil J. Reilly, R-E-I-L-L-Y, seat number
9 seven.

10 Linda A. Grossi, G-R-O-S-S-I, seat number
11 eight.

12 Alantia Cardona, C-A-R-D-O-N-A, seat number
13 nine.

14 Ricardo Ruiz, R-U-I-Z, seat number ten.

15 Bradly Cammarano, C-A-M-M-A-R-A-N-O, seat
16 number eleven.

17 John C. Neal, N-E-A-L, seat number twelve.

18 Travis Whitenan, W-H-I-T-E-N-A-N, seat number
19 thirteen.

20 Virginia Tracy, T-R-A-C-Y, seat number
21 fourteen.

22 THE COURT: Welcome to all of you. You made
23 it to the front of the courtroom. Let me address
24 myself to those of you in the back. It's highly likely
25 at some point you will find yourself in the front of

1 the courtroom. I do ask you to continue to pay
2 attention so I don't have to completely repeat myself
3 when it's your turn to come to the front. Thank you.

4 Let me turn to those of you who made it to
5 the front of the courtroom at this time. The first
6 thing I need to ask anybody in the first fourteen
7 seats, who does not understand the English language and
8 has been having trouble following everything that has
9 happened so far? Let the record reflect no hands have
10 been raised.

11 The next thing I need to ask each of you, you
12 heard me talk about those principles of law. I need to
13 know whether or not you can give me assurance you will
14 follow them. You don't have to like them. You don't
15 have to agree with them. You have to give me assurance
16 you will follow them and let me remind you of what they
17 are.

18 One, that the defendant is presumed innocent.

19 Two, that the People have the burden of proof
20 of guilt beyond a reasonable doubt.

21 And three, that if the defendant does not
22 testify as a witness, that is not a factor from which
23 any inference unfavorable to the defendant may be drawn
24 by you.

25 Please raise your hand if you just simply

1 cannot follow those principles of law. Let the record
2 reflect no hands have been raised.

3 You heard me talk about what needs to happen
4 when you go and deliberate. What I need to know, can
5 you each give me assurance when it comes time to
6 deliberate at the end of a trial, in order to reach a
7 verdict of guilty or not guilty, that each of you will
8 discuss the evidence with your fellow jurors and each
9 of you will consider what your fellow jurors have to
10 say all with a view towards reaching a unanimous
11 verdict, guilty or not guilty, and it can be done
12 without surrendering individual judgment.

13 So, I can break it down for you. What I'm
14 asking you, are you the kind of person, it's okay if
15 you are, my husband is, are you the kind of person, I'm
16 right, I'm always right, it doesn't matter what you put
17 in front of me, I'm never changing my mind, and if you
18 are being picked as a juror, you will go back in the
19 jury room, cross your arms and say, I don't care what
20 you each have to say, I know I'm right. It doesn't
21 make you bad. I married bad. It makes you not proper
22 of sitting on a jury of this magnitude. Raise your
23 hand if you feel I know me, that's my personality, this
24 might not be good for me. Let the record reflect no
25 hands have been raised.

1 Can each of you give me assurance that you
2 will decide this case without fear, favor, sympathy,
3 bias, or prejudice for or against the People, the
4 defendant, or a witness in this case, be that witness
5 is a police officer or a civilian? Can you give me
6 assurance you will be able to do that? Raise your
7 hand.

8 PROSPECTIVE JUROR: I'm a retired corrections
9 officer. I might be prejudiced.

10 THE COURT: I'm getting to all of that in a
11 second. If you have law enforcement in your
12 background, I'll ask all of you that. Most people do.
13 As soon as we get to that, you will let me know.

14 Is there anybody here, in general, who says
15 I'm so afraid or I'm so sympathetic, or to some
16 prejudice, there is no way I could sit here and be fair
17 and impartial? Ms. Philben.

18 PROSPECTIVE JUROR: I work with children
19 every day. I just don't know if I could take it. I
20 have young children myself.

21 THE COURT: With regards to having young
22 children yourself, I know you heard a little bit about
23 the charges. Every one of us either has a child, knows
24 a young person, is an aunt, a mother, a sister, a
25 whatever, a good parent. We all interact with young

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1 children, and the fact that this case involves
2 endangering the welfare of a child and the other charge
3 is criminal sexual act in the first degree, that in and
4 of itself is uncomfortable for everybody. That is not
5 in and of itself a reason not to sit on this jury. The
6 question becomes whether or not you can sit as a fair
7 and impartial juror knowing that you might have
8 children, work with children, might know some children.
9 It's okay if you say to me, and I want honest answers,
10 I can't get past it. I don't want fourteen people
11 raising their hands going, I really love my nephew, I
12 really love my niece, my kids. I would never have
13 anybody sitting here.

14 Ms. Philben, do you feel you could get past
15 it?

16 PROSPECTIVE JUROR: I have friends of mine
17 when I was a kid that was sexually assaulted.

18 THE COURT: Thank you very much for your
19 honesty.

20 Is there anybody else in Philben's position
21 in the front?

22 PROSPECTIVE JUROR: My two nieces have been
23 molested.

24 THE COURT: Anyone else? On consent?

25 MR. BERGER: Yes.

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1 MR. PERRI: Yes.

2 THE COURT: You will be excused from this
3 case. It doesn't mean you are home free. You will go
4 back to central jury and they will probably find a case
5 more suitable for both of you.

6 THE CLERK: Edward Diaz, D-I-A-Z, seat number
7 five.

8 Martha Quinones, Q-U-I-N-O-N-E-S, seat number
9 seven.

10 THE COURT: Welcome, Mr. Diaz and
11 Ms. Quinones. Is there anything you need to tell me as
12 far as what you heard?

13 PROSPECTIVE JUROR: No.

14 PROSPECTIVE JUROR: No.

15 THE COURT: The next thing I need to know, if
16 you know any of the people I already introduced. You
17 heard me mention Mr. Daniel Ramos, who is the
18 defendant, his attorney, Mr. Michael Berger, the
19 prosecutor in this case, Mr. Anthony Perri. You know
20 my name is Teresa Corrigan. You have seen some of my
21 court staff. Do any of you believe you know any of us
22 or that we look familiar?

23 Next thing we'll do is read you the list of
24 names. These are either names you will hear during the
25 trial or potential witnesses in this trial. I need you

1 to listen carefully and let me know if any of the names
2 are familiar to you, or if you know any of these
3 people. Crystal Ramirez, Mya Feliciano Ramirez,
4 Sincere Feliciano Ramirez, Police Officer Joseph
5 Boccio, Police Officer Carl Wigand, Police Officer
6 Thomas Tedeschi, Detective Maurice Baran, Detective
7 Reinaldo Pacheco, Nurse Kathleen McAllister,
8 Christopher Chillseyzn, Christy Hernandez, Karl Reich,
9 Stephanie Ramos, Marshal Hernandez, Max Hernandez,
10 David Ramos, or Juana Arquetta, a supervisor from the
11 NICE transportation company. Raise your hand if you
12 believe you know any of those individuals. Let the
13 record reflect no hands have been raised.

14 I need to know if there are any health
15 reasons why you might not be able to sit on this jury.
16 That includes surgery or doctors' appointments that
17 can't be rescheduled, medication that makes it
18 difficult for you to concentrate and pay attention, or
19 anything else you think is relevant and important that
20 will impact your ability to sit here as a juror.

21 Just so you know the way it works, if you are
22 picked, we usually do an hour's worth of work at a
23 time, an hour to an hour and-a-half, and then you are
24 given a chance to get up, take a break, use the
25 facilities, do whatever it is you need to do. You will

1 get a break between 1:00 and 2:00 in the afternoon. It
2 is usually longer than that for a lunch break, and we
3 will always break by 4:30. With that understanding,
4 raise your hand if you have a medical issue that you
5 need to bring to my attention. Let the record reflect
6 no medical attentions.

7 Let me talk to you about the timing of the
8 case if you are picked as a juror today. You will not
9 be expected to report back here until Monday, May 11th,
10 so you would have the rest of today off, you would have
11 tomorrow off, and expected to return to court at 9:30
12 a.m. on Monday, May 11th. Next week we're only working
13 four days. We're working Monday, Tuesday, Wednesday
14 and Thursday, the 11th through the 14th. You will have
15 Friday the 15th off for you to either go back to work
16 or catch up on whatever you need to catch up on with
17 other activities. The following week we'll only work
18 three days, Tuesday the 19th, Wednesday the 20th, and
19 Thursday the 21st. You will have off Friday before
20 Memorial Day and Monday, Memorial Day. You do get a
21 four-day weekend for the holiday. The following week,
22 if it is needed, we will be here Tuesday the 26th
23 through Friday the 29th. You are only working four
24 days that week. We do not anticipate this case going
25 any later than the 29th.

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1 With that schedule in mind, raise your hand
2 if there is any reason you cannot sit for those dates?

3 Yes, Ms. Mastro?

4 PROSPECTIVE JUROR: I have my brother's
5 graduation from grade school on the 20th.

6 THE COURT: What time is that at? Is it
7 here?

8 PROSPECTIVE JUROR: At Columbia.

9 THE COURT: Thank you.
10 That's May 20th, you said?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Anyone else have a conflict?

13 PROSPECTIVE JUROR: My department has two
14 people, so it's kind of --

15 THE COURT: Do you get paid for being here
16 that entire time?

17 PROSPECTIVE JUROR: I do.

18 THE COURT: What kind of department?

19 PROSPECTIVE JUROR: Distribution department.

20 THE COURT: Let's say you are forced to sit,
21 my question is this: Will you be giving everyone here
22 your undivided attention, or will you be worried about
23 work?

24 PROSPECTIVE JUROR: I'll be worried about
25 work.

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1 THE COURT: Anyone else?

2 Ms. Whitenan.

3 PROSPECTIVE JUROR: I only get paid up to ten
4 business days at my job.

5 THE COURT: Today counts as one?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: It's cutting it close. Anyone
8 else?

9 Any questions for Ms. Mastro with the
10 graduation?

11 Ms. Grossi with her situation and
12 Mr. Whitenan, who if we go eleven days, we're in
13 trouble. Any objection?

14 MR. BERGER: No.

15 MR. PERRI: No, your Honor.

16 THE COURT: The three of you, I'll excuse
17 you. There's probably a shorter in nature that will
18 work better for the three of you. Thank you for being
19 here. Number two, Mastro, number eight, Ms. Grossi and
20 number thirteen, Mr. White.

21 THE CLERK: Rosalie Baez, B-A-E-Z, seat
22 number two.

23 Christopher Mero, M-E-R-O, seat number eight.

24 William J. Miley, M-I-L-E-Y, seat number
25 thirteen.

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1 THE COURT: Welcome, Ms. Baez, Mr. Mero and
2 Mr. Miley. You heard everything going on so far. Is
3 there anything you need to tell us, Ms. Baez?

4 PROSPECTIVE JUROR: I'm sorry, no much
5 English.

6 MR. BERGER: Consent.

7 MR. PERRI: Consent.

8 THE COURT: You are excused. Thank you.

9 THE CLERK: Ada Carroll, C-A-R-R-O-L-L, seat
10 number two.

11 THE COURT: Welcome Ms. Carroll, is there
12 anything you need to tell me so far?

13 PROSPECTIVE JUROR: I have an appointment I
14 have to take my young son to on Monday. It's at 4:20.

15 THE COURT: Four in the afternoon?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: An appointment that can be
18 changed if it needed to be?

19 PROSPECTIVE JUROR: He broke his front
20 permanent teeth. It's difficult for me to get this
21 appointment.

22 THE COURT: Thank you. Sit tight for a
23 moment.

24 Mr. Mero, anything you need to tell me?

25 PROSPECTIVE JUROR: A couple of years ago I

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1 was wrongly accused of domestic violence. I'm paying
2 fines up to today. I have little faith in the judicial
3 system, and I'm a veteran with a hearing problem.

4 THE COURT: Mr. Miley, is there anything you
5 want to tell me?

6 PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: On consent, Carroll.

8 MR. PERRI: Yes.

9 MR. BERGER: Yes.

10 THE COURT: Let me say to everyone with
11 regards to when you come up here. I have no problem
12 letting you go if you have a valid excuse. This is
13 door number one, you have no idea what is behind door
14 number two. Be careful when giving your excuses.

15 THE CLERK: John E. McKnight,
16 M-C-K-N-I-G-H-T, seat number two.

17 Carmela Handel, H-A-N-D-E-L, seat number
18 eight.

19 THE COURT: Welcome, Mr. McKnight, anything
20 you need to tell me?

21 PROSPECTIVE JUROR: No. I'm good.

22 THE COURT: Mr. Handel, anything you need to
23 tell me?

24 PROSPECTIVE JUROR: I have a nine-year old
25 daughter. I don't know how I'm going to react to this.

1 THE COURT: I appreciate that situation.
2 Like I said earlier, a lot of individuals have young
3 children or know young children. What I need to know
4 from you, are you of the mindset right now that
5 regardless of whatever instructions I give you, that
6 that tells you to put your emotions aside, just listen
7 to the evidence here, evaluate the evidence here,
8 listen to the law I give to you and make a decision
9 until all of that is completed; could you do that?

10 PROSPECTIVE JUROR: I'm not sure.

11 THE COURT: Thank you very much for your
12 honesty.

13 MR. BERGER: Consent.

14 MR. PERRI: Consent.

15 THE COURT: Thank you.

16 THE CLERK: Carlos Rodriguez,
17 R-O-D-R-I-G-U-E-Z, seat number eight.

18 THE COURT: Welcome, Mr. Rodriguez. Is there
19 anything you need to tell me so far?

20 PROSPECTIVE JUROR: I'm a diabetic.

21 THE COURT: Is it controlled with medication?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: If there comes a point in time
24 where you need to grab a little snack, something to
25 eat, that won't be a problem. You will be able to do

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1 it right here in the courtroom. Additionally, we do
2 take a break every hour for about five minutes. You
3 need to do whatever you need to regarding testing; is
4 that sufficient to keep your situation under control?

5 PROSPECTIVE JUROR: My sugar goes up and
6 down.

7 THE COURT: How do you test it, with the
8 prick?

9 PROSPECTIVE JUROR: Is that something you do
10 more than once an hour?

11 PROSPECTIVE JUROR: I have to do it four
12 times a day.

13 THE COURT: When is the normal time you do
14 it?

15 PROSPECTIVE JUROR: Normal, when you get up,
16 around lunchtime, before I eat and after I eat.

17 THE COURT: That shouldn't be a problem here
18 if you feel yourself getting lightheaded while sitting
19 here. Let the officers know and we'll take whatever
20 break you need, and like I said, if you need to keep
21 some granola bars or something with you. Anything
22 else?

23 PROSPECTIVE JUROR: I have family in law
24 enforcement.

25 THE COURT: We'll get to that. I don't know

1 a single friend who doesn't have a friend or family
2 that is in some form of lawyering or law enforcement.

3 Is there anyone else with regards to the days
4 of the trial. There are no other issues with the days
5 that everyone needs to sit? Let the record reflect no
6 hands have been raised.

7 The next thing I need to know, if these
8 categories affect you. It's either you, yourself,
9 personally, a family member or close friend. Does
10 anybody know victims of crimes, whether you have
11 witnessed a crime or know someone who has or know
12 someone who has testified in a courtroom, or has ever
13 been convicted of a crime? So if you know anyone or
14 yourself has ever before been a victim of a crime or
15 convicted of a crime, raise your hand and keep your
16 hands up so I could put it down.

17 Mr. Miley.

18 PROSPECTIVE JUROR: I'm a retired New York
19 City Police Department, twenty-five years retired, and
20 I had someone in my family convicted of a crime.

21 THE COURT: A couple of questions for you.
22 Obviously, as a retired NYPD, you heard me mention
23 there will be some police officers who will testify.

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: Under the law, they don't get

1 special passes. Police officers can tell the truth and
2 lie like everybody else.

3 PROSPECTIVE JUROR: I know that.

4 THE COURT: Will you be able to follow my
5 instructions regarding the law and evaluate the
6 testimony of law enforcement individuals without giving
7 a leg up just because they're law enforcement?

8 PROSPECTIVE JUROR: Absolutely.

9 THE COURT: Is there any issue with the fact
10 you know someone in your family convicted of a crime
11 that will get in the way of being fair and impartial
12 here?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Do you know if the individual
15 convicted of a crime was dealt with properly?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Any bad days with the defense
18 attorney, prosecutors, judges or --

19 PROSPECTIVE JUROR: A little bit of a bad
20 taste. It's a long time ago too. It's 2001, 2002.

21 THE COURT: Bad taste. You have a little bit
22 of bad taste that will get in the way of being fair and
23 impartial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Does anyone else have that

1 situation? No hands have been raised.

2 Do any of you or people close to you, be it
3 family or friends, have any pending actions within the
4 court system? It could be pending criminal or pending
5 civil, any pending action? Let the record reflect, no
6 hands have been raised.

7 You heard me mention the nature of the
8 charges a couple of times and heard a few jurors say,
9 you know what, I have a young child, that's not just
10 for me. You had some time to think about it now. Is
11 there anything about the nature of the crime charged,
12 that's all you know, the name of the crime charged, is
13 there anything about that and that alone that will
14 prevent you from being fair and impartial in this
15 matter if you are picked? No hands have been raised.

16 You heard me state to Mr. Miley, under our
17 law a police officer is no more or less believable,
18 solely and simply because he or she is a police
19 officer. Is there anyone here who cannot evaluate a
20 police officer's testimony for truthfulness and
21 accuracy just as you would testimony of anyone else?
22 That means you either love the cop so much, always
23 right, or hate the cop so much, always lying. There's
24 nothing wrong with either. It just doesn't make you
25 good for this case. You would probably be better in a

1 civil case. Does anyone have that feeling with regard
2 to law enforcement? Let the record reflect no hands
3 have been raised.

4 If you are picked as a juror you are not
5 allowed to go where the crime charged allegedly was
6 committed. That location in this case was 124 Park
7 Avenue, in Roosevelt, New York. Is there anyone for
8 either work purposes, or traveling to and from home
9 that needs to go past that location on a daily basis?

10 Can you give me assurance that you won't run
11 out now and go visit that location because you are not
12 allowed? Does anyone have that urge that they can't
13 put it aside? You got to go check it out?

14 Do any of you have religious beliefs that
15 prevent you from sitting in judgment of someone and
16 voting guilty or not guilty? Any religious beliefs?
17 Note hands have been raised. You can all speak. My
18 voice, I'm going to drink a little bit. I'm thirsty.
19 As we sit at the desk, you can have a closed bottle of
20 water or something closed in front of you. If you need
21 to take a sip, you can do that, so give me a moment.

22 Have any of you ever sat previously as a
23 juror in either a criminal case, a civil case, or the
24 grand jury? Raise your hand if you have any prior
25 jurors here. Number three.

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1 PROSPECTIVE JUROR: About seven years ago. I
2 don't remember all of the details it had to do with.

3 THE COURT: Don't tell me that. Civil or
4 criminal?

5 PROSPECTIVE JUROR: It was civil, I think.

6 THE COURT: Here in Nassau County?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Without telling me the verdict,
9 did you reach a verdict?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: You reached a verdict?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: You believe it was civil?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Is there anything about that
16 experience that makes you believe you would not be a
17 good juror for this case, you need to be fair and
18 impartial?

19 PROSPECTIVE JUROR: No.

20 THE COURT: No problem?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Mr. Fischer, civil or criminal?

23 PROSPECTIVE JUROR: Civil.

24 THE COURT: How long ago?

25 PROSPECTIVE JUROR: Thirty years ago.

1 THE COURT: Here in Nassau?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Without telling me the verdict,
4 did you reach a verdict?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Is there anything about that
7 situation that makes you believe you could not be fair
8 and impartial here?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Anyone else, Mr. Noble?

11 PROSPECTIVE JUROR: I had to testify in front
12 of the grand jury about twenty years ago in the city.

13 THE COURT: Mr. Noble, if I remember, you
14 stated you work for the sheriff's --

15 PROSPECTIVE JUROR: Corrections department.

16 THE COURT: You stated you don't know that
17 this is a good case for you; is that correct?

18 PROSPECTIVE JUROR: Right.

19 THE COURT: On consent for Mr. Noble?

20 MR. PERRI: Yes.

21 MR. BERGER: Yes.

22 THE COURT: We'll excuse you from this case.
23 If we could refill seat six, please.

24 THE CLERK: Teresa Bowen, B-O-W-E-N, seat
25 number six.

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1 THE COURT: Welcome, Ms. Bowen. I hope you
2 have been paying attention. Is there anything you need
3 to tell me?

4 PROSPECTIVE JUROR: My only concern is the
5 length of the case. I don't get paid if I don't work.

6 THE COURT: Will that be a financial
7 hardship for you?

8 PROSPECTIVE JUROR: For one bill, yes. We
9 can make it work if I have to. I appreciate a case a
10 little shorter. But two, almost three weeks --

11 THE COURT: You heard the dates, Friday off
12 and then three --

13 PROSPECTIVE JUROR: The dates work, it's just
14 the length.

15 THE COURT: I'm getting the sense you are
16 okay with staying.

17 PROSPECTIVE JUROR: It's my civic duty. I'll
18 do what I have to do.

19 THE COURT: I'm very serious about this.
20 Let's say we're now in the third week, it's May 26th
21 and still sitting here. What I need to know, is that
22 your mind will remain with us and not start wandering
23 if I wasn't sitting here, I would be able to pay that
24 bill. This is a real problem.

25 PROSPECTIVE JUROR: You always have a little

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1 savings to cover some bills. I can't say I'm not
2 thinking about it.

3 THE COURT: It will not get in the way of
4 paying attention?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Thank you very much.

7 Does anyone else have anything with regards
8 to jury service? Ms. Quinones.

9 PROSPECTIVE JUROR: Civil.

10 THE COURT: How long ago?

11 PROSPECTIVE JUROR: About twenty years ago.

12 THE COURT: Here in Nassau County?

13 PROSPECTIVE JUROR: No, Brooklyn.

14 THE COURT: Without telling me the verdict,
15 did you reach a verdict?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Was there anything about that
18 experience that makes you think you cannot sit and be
19 fair and impartial if you are picked in this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: I'm expecting a lot of hands. Do
22 any of you, yourselves, or family, or friends who are
23 part of law enforcement, that includes police officers,
24 corrections officer, court officers, attorney general's
25 office, it also includes attorneys, FBI, DEA, any sort

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1 of law enforcement or attorney background? Hands up.
2 I have to mark it.

3 Ms. Ortega, in your family or friends?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Mr. McKnight?

6 PROSPECTIVE JUROR: My cousin is a lawyer.

7 THE COURT: What kind of lawyer, criminal?

8 PROSPECTIVE JUROR: Criminal.

9 THE COURT: Here in Nassau County?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Defense or prosecution?

12 PROSPECTIVE JUROR: Defense.

13 THE COURT: Do you talk with your cousin
14 often?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you discuss cases?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Let me ask, is there anything
19 about the fact your cousin is a criminal defense
20 attorney that makes you believe you cannot be fair and
21 impartial in this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Can you give me assurance that
24 when something happens in the courtroom, that you
25 either don't understand or you want to inquire about

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1 more? You have to give me assurance you will not call
2 your cousin and say, hey, can you help me out with
3 this; can you give me that assurance?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Mr. Rubinic.

6 PROSPECTIVE JUROR: A friend of mine was a
7 judge in Queens. Retired now. He is an attorney in
8 Nassau.

9 THE COURT: Do you know if he is an attorney
10 in civil or criminal?

11 PROSPECTIVE JUROR: Civil.

12 THE COURT: Same questions for you, is there
13 anything about that relationship that is going to get
14 in the way of you being fair and impartial?

15 PROSPECTIVE JUROR: No.

16 THE COURT: You can't go home tonight and say
17 listen, this judge had a coughing fit and had to step
18 off. You can't start talking about this case if you
19 are picked, okay?

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: You can give me that assurance
22 you won't do that?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Mr. Fischer.

25 PROSPECTIVE JUROR: My wife is an attorney,

1 my daughter is an attorney. I have a number of friends
2 who are police officers, and well, one is a police
3 officer. I have a client who is a police officer. I
4 have a couple of close friends who are attorneys,
5 criminal attorneys.

6 THE COURT: Obviously, your wife being an
7 attorney, you will talk to her every night, I hope,
8 when you get home?

9 PROSPECTIVE JUROR: No.

10 THE COURT: The same assurance. Is there
11 anything about the fact you know so many people within
12 the legal profession and within law enforcement that
13 you will be able to separate that desire to want to
14 talk them about this case if you are chosen as a juror?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Is there anything about those
17 relationships that makes you believe that you couldn't
18 be fair and impartial in this case because you want to
19 give one side or the other a little edge?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you. Mr. Diaz.

22 PROSPECTIVE JUROR: My wife's sister's
23 husband is a cop, NYPD, and her cousin's husband also
24 is NYPD.

25 THE COURT: Same questions to you. Is it

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1 going to get in the way of you doing this job?

2 PROSPECTIVE JUROR: I don't think so. We
3 talk a lot. He tells me stories and stuff. I will
4 try.

5 THE COURT: A couple of things. We get
6 nervous as the judge and attorneys. We get nervous
7 when we hear people say, I will try, or I think so. We
8 have to make sure we have a jury that is completely
9 fair and impartial. I have people that will follow the
10 laws as I give it to them and evaluate witness
11 credibility as they come in. When people say, I will
12 try, or I think so, we get nervous.

13 Let's say you all have that bucket list and
14 on the bucket list you have sky diving. You have now
15 gotten up the courage to sky dive and done everything
16 you need to do on the ground. Now you are on that
17 plane way up in the sky and ready to jump out and the
18 instructor says to you, the last thing we need to do
19 before we jump is check each other's packs to make sure
20 the parachute is good, the straps are good, everything
21 is tight, good to go. Once we do that, we'll jump out
22 of the plane. And the instructor says to you, you
23 check my pack first. You, as the nonexpert, turn to
24 the instructor, you start checking the pack, the
25 straps, doing everything. You turn him around and go

1 thumbs up, you are good to go. I know you are good to
2 go. The instructor turns you around, checks your
3 straps, takes you and he goes, I tried to check. I
4 think you are good. Are you going to jump out of that
5 plane? No. So, it's kind of that theory. Everyone
6 will try and everyone thinks they will, but in a jury
7 situation we need to know you can do it, not that you
8 will try to do it, and there is no wrong answer and if
9 you can't, that's okay. I need to know for sure, this
10 relationship with law enforcement, will it get in the
11 way?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Don't give me the answer because
14 you think I want to hear it.

15 PROSPECTIVE JUROR: No, it won't.

16 THE COURT: Ms. Bowen.

17 PROSPECTIVE JUROR: Paralegal at a law firm.

18 THE COURT: Civil or criminal?

19 PROSPECTIVE JUROR: Immigration lawyers.

20 THE COURT: Is there anything about the fact
21 you will have a set of knowledge, a skilled set others
22 might not have, do you appreciate and understand the
23 law has to come from me, however, it can't come from
24 your law firm where you work and it can't come from
25 your ability to go home and get on Lexus and research

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1 something; do you understand that?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Can you give me assurance you
4 wouldn't do those things if you are picked?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Ms. Quinones?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Mr. Rodriguez, anyone?

9 PROSPECTIVE JUROR: My stepson is a
10 corrections officer, and my son-in-law is a prosecutor
11 for the DA's in Queens.

12 THE COURT: Again, to you, sir, is there
13 anything about the fact that you are close to people
14 that are in law enforcement and, in fact, close to
15 someone who is a prosecutor; is that going to get in
16 the way of you being fair and impartial to both sides
17 here?

18 PROSPECTIVE JUROR: Yes, I think so.

19 THE COURT: Thank you very much for your
20 honesty. I appreciate that.

21 Ms. Cardona.

22 MR. BERGER: Yes, it will get in the way.

23 THE COURT: Yes, it will get in the way.

24 Ms. Cardona.

25 PROSPECTIVE JUROR: My mother is a defense

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1 attorney in Florida. She passed away two years ago.

2 THE COURT: Is there anything about that
3 relationship that is going to get in the way of you
4 being fair and impartial?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Are you going to give either side
7 a leg up based on your mom's prior work?

8 PROSPECTIVE JUROR: Leg up?

9 THE COURT: Meaning you will say, hey, mom,
10 I'm a defense attorney, therefore, defense attorneys
11 are the best, or hey, for everyone else, my relative is
12 a prosecutor. Therefore, prosecutors are better than
13 everyone else. You will be able to evaluate the
14 evidence fairly?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Mr. Ruiz?

17 PROSPECTIVE JUROR: My brother-in-law is a
18 detective.

19 THE COURT: Where at?

20 PROSPECTIVE JUROR: Suffolk County.

21 THE COURT: Is there anything about that
22 relationship that is going to get in the way of you
23 being fair and impartial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Will you be able to evaluate law

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1 enforcement that comes here the same way as you would
2 everybody else?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Mr. Cammarano?

5 PROSPECTIVE JUROR: Yes, sir. My uncle is
6 retired NYPD.

7 THE COURT: Same questions to you, sir. Is
8 it going to get in the way?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Mr. Neal, anything?

11 PROSPECTIVE JUROR: I have a child in Suffolk
12 County, a cop.

13 THE COURT: Still lives with you or no?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Do you talk to him every day?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Yes?

18 PROSPECTIVE JUROR: I do.

19 THE COURT: I need you to say yes or no.

20 Are you going to be able to give me assurance
21 that you will not start talking to him about this case
22 when you speak to him each day?

23 PROSPECTIVE JUROR: I wouldn't talk to him.

24 THE COURT: You would not talk to him?

25 PROSPECTIVE JUROR: No.

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1 THE COURT: Is the fact that your son is in
2 law enforcement going to get in the way of you being
3 fair and impartial in this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Thank you very much.

6 Mr. Miley, we heard from you. Thank you.

7 Ms. Tracy, anything?

8 PROSPECTIVE JUROR: My son was a cop in the
9 city for eight years. He switched over to the fire and
10 on that for about seven years.

11 MR. BERGER: Her --

12 THE COURT: Son is a cop in the city and
13 switched over to the fire department.

14 Anything about that relationship that gets in
15 the way of you being fair and impartial?

16 PROSPECTIVE JUROR: No. I heard some horror
17 stories in the Bronx, but it didn't interfere.

18 THE COURT: The horror stories you heard
19 about when he was in the Bronx, can I get assurance
20 from you that you will not start thinking about them
21 when you are sitting here on this case because
22 obviously, what happened in the Bronx has nothing to do
23 with the charges here?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Can I get assurance from you?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Can I get assurance from you that
3 you will not call your son up? What do you think?
4 This is what is going on.

5 PROSPECTIVE JUROR: No, I wouldn't do that.

6 THE COURT: Let's excuse Mr. Rodriguez. You
7 are excused on consent.

8 MR. PERRI: Yes, your Honor.

9 MR. BERGER: Yes, your Honor.

10 THE CLERK: Grace Shin, S-H-I-N.

11 THE COURT: Welcome, Ms. Shin. I hope you
12 have been paying attention. Is there anything you need
13 to tell me?

14 PROSPECTIVE JUROR: I can't fully understand.
15 It's hard to listen.

16 MR. BERGER: Consent.

17 MR. PERRI: Yes, your Honor.

18 THE COURT: Thank you.

19 THE CLERK: Brendan J. Quinn, Q-U-I-N-N, seat
20 number eight.

21 THE COURT: Welcome, Mr. Quinn, anything you
22 need to tell me so far?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Any family or friends in law
25 enforcement?

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1 PROSPECTIVE JUROR: Well, maternal
2 grandfather.

3 THE COURT: What did he do?

4 PROSPECTIVE JUROR: I think he's a retired
5 police officer, but like back in the day, back in the
6 day.

7 THE COURT: Will you be able to follow my
8 principles of law?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Any issue, do you know anyone or
11 you, yourself, ever a victim of a crime, witnessed a
12 crime, convicted of a crime, or have any pending
13 matters?

14 PROSPECTIVE JUROR: No.

15 THE COURT: And the days of the week are good
16 for you with regard to sitting?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: I'll go down the row to each of
19 you with some general questions.

20 Mr. Ortega, which town do you reside in?

21 PROSPECTIVE JUROR: Nassau County, Long
22 Beach.

23 THE COURT: How long have you been there,
24 sir?

25 PROSPECTIVE JUROR: About twenty-five years.

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1 THE COURT: What is the highest level of
2 school you completed?

3 PROSPECTIVE JUROR: Kind of college, three
4 years.

5 THE COURT: Do you work, sir?

6 PROSPECTIVE JUROR: I do.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR: Doorman.

9 THE COURT: Married, sir?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: What does your spouse do?"

12 PROSPECTIVE JUROR: She doesn't work.

13 THE COURT: Homemaker?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Hardest job in the world. Do you
16 have any children?

17 PROSPECTIVE JUROR: I do. I have two,
18 twenty-five and twenty-three.

19 THE COURT: Twenty-three, what does she do?

20 PROSPECTIVE JUROR: Goes to school.

21 THE COURT: What was the age of the other
22 one?

23 PROSPECTIVE JUROR: Twenty-five.

24 THE COURT: What does that child do?

25 PROSPECTIVE JUROR: Also goes to school.

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1 THE COURT: How do you like to spend your
2 spare time?

3 PROSPECTIVE JUROR: Friends, with family,
4 beach.

5 THE COURT: Sir, are you on social media?

6 PROSPECTIVE JUROR: I'm sorry?

7 THE COURT: Are you on social media,
8 Facebook?

9 PROSPECTIVE JUROR: Not really, no. Twitter.

10 THE COURT: If you are chosen as a juror, you
11 will not sign up for a new Facebook account and get on
12 it?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: You cannot go on to social media
15 and discuss this case if you are chosen as a juror.
16 Can you give me your assurance you will not do that?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Mr. McKnight, what town do you
19 reside in?

20 PROSPECTIVE JUROR: Massapequa Park.

21 THE COURT: How long have you been there?

22 PROSPECTIVE JUROR: Thirty-eight years.

23 THE COURT: Highest level of school?

24 PROSPECTIVE JUROR: College.

25 THE COURT: Do you work?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: What do you do?

3 PROSPECTIVE JUROR: Carpentry.

4 THE COURT: Married, sir?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Significant other?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What does he or she do?

9 PROSPECTIVE JUROR: Homemaker.

10 THE COURT: Any children?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: How many?

13 PROSPECTIVE JUROR: One.

14 THE COURT: Age?

15 PROSPECTIVE JUROR: Six.

16 THE COURT: Other than keeping busy with your
17 six-year old, how do you like to spend your spare time?

18 PROSPECTIVE JUROR: Fishing, anything
19 outdoors.

20 THE COURT: Social media?

21 PROSPECTIVE JUROR: No, I'm not.

22 THE COURT: You won't start now?

23 PROSPECTIVE JUROR: No, I will not.

24 THE COURT: Mr. Rubinic.

25 PROSPECTIVE JUROR: New Hyde Park.

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1 THE COURT: How long have you been there?

2 PROSPECTIVE JUROR: Fifteen years.

3 THE COURT: Highest level of school?

4 PROSPECTIVE JUROR: College.

5 THE COURT: Work, sir?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR: Sell commercial time for
9 radio stations.

10 THE COURT: Married?

11 PROSPECTIVE JUROR: Separated.

12 THE COURT: What did your spouse do?

13 PROSPECTIVE JUROR: She works for the Town of
14 North Hempstead for the district attorney.

15 THE COURT: For the county attorney?

16 PROSPECTIVE JUROR: County.

17 THE COURT: In the Town of North Hempstead?

18 PROSPECTIVE JUROR: Right.

19 THE COURT: Children?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: School age or grown?

22 PROSPECTIVE JUROR: All teach.

23 THE COURT: How do you like to spend your
24 spare time.

25 PROSPECTIVE JUROR: Hockey baseball.

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1 THE COURT: Rangers or Islander.

2 PROSPECTIVE JUROR: Rangers.

3 THE COURT: Not looking too good for us. Any
4 social media?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Let me go back to the Town of
7 North Hempstead. Do I need to be concerned that you
8 will call up anyone from the Town of North Hempstead
9 and try to get a better understanding of what will go
10 on here?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Mr. Fischer, what is the town
13 which you reside?

14 PROSPECTIVE JUROR: Glen Cove.

15 THE COURT: How long?

16 PROSPECTIVE JUROR: Thirty-eight years.

17 THE COURT: Highest level of school?

18 PROSPECTIVE JUROR: Bachelor.

19 THE COURT: Do you work?

20 PROSPECTIVE JUROR: I'm a CPA.

21 THE COURT: Married?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Spouse work?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: What does he or she do?

Proceedings

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1 PROSPECTIVE JUROR: She is an attorney.

2 THE COURT: Any children?

3 PROSPECTIVE JUROR: One.

4 THE COURT: School age or grown?

5 PROSPECTIVE JUROR: Grown.

6 THE COURT: What does he or she do?

7 PROSPECTIVE JUROR: Attorney.

8 THE COURT: You did tell me that. I

9 apologize. How do you like to spend your spare time?

10 PROSPECTIVE JUROR: Golf, friends.

11 THE COURT: Social media?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Don't start now.

14 PROSPECTIVE JUROR: Mr. Diaz, what town?

15 PROSPECTIVE JUROR: Elmont.

16 THE COURT: How long have you been there?

17 PROSPECTIVE JUROR: Five years.

18 THE COURT: Where were you before that?

19 PROSPECTIVE JUROR: Bayside.

20 THE COURT: Queens?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: You were in Queens and then

23 Nassau County?

24 PROSPECTIVE JUROR: No, I was here before

25 that.

1 THE COURT: Where were you when you were here
2 before?

3 PROSPECTIVE JUROR: In Elmont.

4 THE COURT: Highest level of school?

5 PROSPECTIVE JUROR: One year of college.

6 THE COURT: Do you work?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What do you do?

9 PROSPECTIVE JUROR: Retail supermarket.

10 THE COURT: Married?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What does your spouse do?

13 PROSPECTIVE JUROR: Dental lab tech.

14 THE COURT: Any children?

15 PROSPECTIVE JUROR: Three.

16 THE COURT: School age?

17 PROSPECTIVE JUROR: School age.

18 THE COURT: How do you like to spend your
19 spare time?

20 PROSPECTIVE JUROR: Family, outdoor..

21 THE COURT: Social media?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Ms. Bowen, what town, ma'am?

24 PROSPECTIVE JUROR: Massapequa Park.

25 THE COURT: How long have you been there?

Proceedings

474

1 PROSPECTIVE JUROR: Twelve years.

2 THE COURT: Highest level of school?

3 PROSPECTIVE JUROR: Bachelor's degree.

4 THE COURT: Do you work?

5 PROSPECTIVE JUROR: Part-time paralegal.

6 THE COURT: Married?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Spouse work?

9 PROSPECTIVE JUROR: Yes. He's an operating
10 engineer.

11 THE COURT: Any children?

12 PROSPECTIVE JUROR: Yes, two, eight and ten.

13 THE COURT: How do you like spend your spare
14 time?

15 PROSPECTIVE JUROR: Family, volunteering,
16 girl scouts, church functions.

17 THE COURT: Social media?

18 PROSPECTIVE JUROR: Yes, but not active.

19 THE COURT: Ms. Quinones, which town?

20 PROSPECTIVE JUROR: Franklin Square.

21 THE COURT: How long have you been there?

22 PROSPECTIVE JUROR: Twenty-five years.

23 THE COURT: Highest level of school?

24 PROSPECTIVE JUROR: Bachelor of science.

25 THE COURT: Work?

Proceedings

475

1 PROSPECTIVE JUROR: Part time.

2 THE COURT: What do you do part time?

3 PROSPECTIVE JUROR: Laboratory technologist.

4 THE COURT: Married?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Significant other?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Any children?

9 PROSPECTIVE JUROR: One.

10 THE COURT: Grown or school age?

11 PROSPECTIVE JUROR: Grown.

12 THE COURT: What does she do?

13 PROSPECTIVE JUROR: Business analyst.

14 THE COURT: How do you like to spend your
15 spare time?

16 PROSPECTIVE JUROR: Grand kids.

17 THE COURT: Are you on social media?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Mr. Quinn.

20 PROSPECTIVE JUROR: Bethpage.

21 THE COURT: How long?

22 PROSPECTIVE JUROR: Twenty years.

23 THE COURT: Highest level of school you
24 completed?

25 PROSPECTIVE JUROR: High school.

Proceedings

476

1 THE COURT: Do you work, sir?

2 PROSPECTIVE JUROR: Can you --

3 THE COURT: I'm having trouble hearing. Can
4 everyone come up to the bench to hear? I couldn't hear
5 you from over there. I wanted to -- I just have a few
6 questions. I want to make sure I heard you correctly.

7 Bethpage, twenty years, finished high school.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What is it you do for your job?

10 PROSPECTIVE JUROR: No.

11 THE COURT: No employment?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Married?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Any children?

16 PROSPECTIVE JUROR: No.

17 THE COURT: How do you like to spend your
18 spare time?

19 PROSPECTIVE JUROR: I mean, I like to, I like
20 to read. I also like to research.

21 THE COURT: Are you on social media? Are you
22 on Facebook?

23 PROSPECTIVE JUROR: Not active social media.

24 THE COURT: Can you give me assurance if you
25 are picked as a juror you wouldn't go on Facebook and

Proceedings

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1 talk about the case?

2 PROSPECTIVE JUROR: No, I got better things
3 to do.

4 THE COURT: Thank you. I appreciate you
5 coming up. I had trouble hearing you back there.

6 Ms. Cardona, which town?

7 PROSPECTIVE JUROR: Baldwin.

8 THE COURT: How long?

9 PROSPECTIVE JUROR: Eighteen years.

10 THE COURT: Highest level of school?

11 PROSPECTIVE JUROR: Bachelor.

12 THE COURT: Do you work?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: What do you do?

15 PROSPECTIVE JUROR: Nassau County civil
16 service, commission personal specialist.

17 THE COURT: Are you married?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Significant other?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Children?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: How many?

24 PROSPECTIVE JUROR: Three.

25 THE COURT: Grown or school age?

Proceedings

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1 PROSPECTIVE JUROR: Grown.

2 THE COURT: What do they do?

3 PROSPECTIVE JUROR: My son-in-law is a Nassau
4 County probation officer.

5 THE COURT: Thank you.

6 What do the other two do?

7 PROSPECTIVE JUROR: One is a search plant
8 operator and my daughter is a student.

9 THE COURT: With regards to your son that is
10 the Nassau County probation officer, same questions for
11 you, is it going to get in the way of you being fair
12 and impartial if you are picked?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Are you going to get the sense
15 that you need to call them up and say, hey, I don't
16 understand what is going on, can you explain it to me?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Can you give me assurance you
19 will not try to reach out to them during the pendency
20 of this trial if you are picked as a juror?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Other than to talk about the
23 family?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Thank you.

Proceedings

479

1 Mr. Ruiz, what town?

2 PROSPECTIVE JUROR: Levittown.

3 THE COURT: How long have you been there?

4 PROSPECTIVE JUROR: Twenty-four years.

5 THE COURT: Highest level of school?

6 PROSPECTIVE JUROR: College.

7 THE COURT: Do you work?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What do you do?

10 PROSPECTIVE JUROR: Investor analyst.

11 THE COURT: Married?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Significant other?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Children?

16 PROSPECTIVE JUROR: Nope.

17 THE COURT: How do you like to spend your
18 spare time?

19 PROSPECTIVE JUROR: Work out.

20 THE COURT: On social media?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Are you the kind of guy this
23 morning when you got up and realized you were coming to
24 jury duty, if I was on your Facebook page, if you have
25 that, would it say Mineola courts next to it?

Proceedings

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1 PROSPECTIVE JUROR: No.

2 THE COURT: What I'm getting at, being that
3 you are on social media, I need your assurance you will
4 not start posting about their case if you are chosen as
5 a juror; can you give me that assurance?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Do you blog?

8 PROSPECTIVE JUROR: No.

9 THE COURT: I need you to not start blogging,
10 even if the spirit moved you if you were picked as a
11 juror. I need to know you wouldn't do that. Thank
12 you, sir.

13 Mr. Cammarano.

14 PROSPECTIVE JUROR: Freeport.

15 THE COURT: How long have you been there?

16 PROSPECTIVE JUROR: I grew up there. I've
17 been there for about a year. I grew up there, moved
18 out, been there for a year.

19 THE COURT: Highest level of school?

20 PROSPECTIVE JUROR: Master's.

21 THE COURT: In what?

22 PROSPECTIVE JUROR: Education.

23 THE COURT: Do you work?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: What do you do?

Proceedings

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1 PROSPECTIVE JUROR: Teacher.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Significant other?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Children?

7 PROSPECTIVE JUROR: No.

8 THE COURT: How do you like to spend your
9 spare time?

10 PROSPECTIVE JUROR: Sports, poker, family.

11 THE COURT: Social media?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Can you give me that assurance
14 you wouldn't post about this case if you are chosen as
15 a juror?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Mr. Neal, what town?

18 PROSPECTIVE JUROR: Levittown.

19 THE COURT: How long have you been there?

20 PROSPECTIVE JUROR: Fifty years.

21 THE COURT: Highest level of school?

22 PROSPECTIVE JUROR: High school.

23 THE COURT: Do you work?

24 PROSPECTIVE JUROR: I do.

25 THE COURT: What do you do?

Proceedings

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1 PROSPECTIVE JUROR: Automotive field.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR: I am.

4 THE COURT: Does he or she work?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What does he or she do?

7 PROSPECTIVE JUROR: Clerical.

8 THE COURT: Any children?

9 PROSPECTIVE JUROR: Two.

10 THE COURT: Grown or school age?

11 PROSPECTIVE JUROR: Grown.

12 THE COURT: What do they do?

13 PROSPECTIVE JUROR: Cop, and my daughter is
14 clerical.

15 THE COURT: How do you like to spend your
16 spare time?

17 PROSPECTIVE JUROR: Yard work.

18 THE COURT: Are you on social media?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Mr. Miley, what town?

21 PROSPECTIVE JUROR: East Meadow.

22 THE COURT: How long have you been there?

23 PROSPECTIVE JUROR: Twenty-two years.

24 THE COURT: Highest level of school?

25 PROSPECTIVE JUROR: Four years of college,

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1 two-year degree.

2 THE COURT: I know you retired NYPD.

3 PROSPECTIVE JUROR: Correct.

4 THE COURT: Do you currently work?

5 PROSPECTIVE JUROR: Yes, I do.

6 THE COURT: What do you do?

7 PROSPECTIVE JUROR: Commercial blazing
8 company.

9 THE COURT: Are you married?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Spouse work?

12 PROSPECTIVE JUROR: She.

13 THE COURT: What does she do?

14 PROSPECTIVE JUROR: Real estate.

15 THE COURT: I know you had children, just
16 remind me.

17 PROSPECTIVE JUROR: Four.

18 THE COURT: All grown?

19 PROSPECTIVE JUROR: Nope.

20 THE COURT: What do they do?

21 PROSPECTIVE JUROR: The one that is not
22 grown?

23 THE COURT: You have one.

24 PROSPECTIVE JUROR: I have three grown and
25 one fifteen-year old.

Proceedings

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1 THE COURT: Three grown, what do they do?

2 PROSPECTIVE JUROR: One is a sanitation
3 supervisor, New York City. My daughter is a registered
4 nurse, and my son, my other son is a union carpenter.

5 THE COURT: How do you like to spend your
6 spare time?

7 PROSPECTIVE JUROR: Usually wind up in the
8 fall coaching youth football, and basically, any time
9 after that I'm kind of like a couch potato. That's
10 about it.

11 THE COURT: Social media?

12 PROSPECTIVE JUROR: Yes, I am.

13 THE COURT: Can you give me your assurance
14 you will not post about this case?

15 PROSPECTIVE JUROR: Absolutely.

16 THE COURT: Ms. Tracy, what town?

17 PROSPECTIVE JUROR: Hicksville.

18 THE COURT: How long have you been there?

19 PROSPECTIVE JUROR: Forty-five years.

20 THE COURT: Highest level of school?

21 PROSPECTIVE JUROR: High school.

22 THE COURT: Do you work, ma'am?

23 PROSPECTIVE JUROR: No, I'm retired.

24 THE COURT: What did you do before you were
25 retired?

Proceedings

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1 PROSPECTIVE JUROR: Mostly I was a
2 stay-at-home mom and then part time in the Hicksville
3 school district and later in life I got my LPN license.

4 THE COURT: Are you married now?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Spouse work?

7 PROSPECTIVE JUROR: No, retired.

8 THE COURT: What did he do?

9 PROSPECTIVE JUROR: Deputy FDNY, retired
10 chief.

11 THE COURT: Any children?

12 PROSPECTIVE JUROR: Three.

13 THE COURT: Grown?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: What do they do?

16 PROSPECTIVE JUROR: Older one was a cop
17 turned firemen. My daughter is a nurse, and my younger
18 son works for the post office.

19 THE COURT: How do you like to spend your
20 spare time?

21 PROSPECTIVE JUROR: Shopping, watching my
22 grandchildren, walking.

23 THE COURT: Social media?

24 PROSPECTIVE JUROR: No.

25 THE COURT: I just want to note the time for

1 everybody. It's getting a little late. It's at a
2 point in time where the attorneys will be able to ask
3 you questions. Rather than break that up, what we'll
4 do is break for lunch now. I'm going to ask you to all
5 be back and the officers will tell you where to go. Be
6 back at 2:00 sharp. We will call you back into the
7 room at 2:00. The attorneys will ask you questions and
8 see if any have been chosen as jurors. Depending how
9 far we get to those of you in the audience, it will be
10 your turn to come up here in the box. Enjoy your
11 lunch. Let me give you some admonitions while you
12 leave and walk about.

13 Please keep an open mind throughout this
14 process. Do not discuss anything that has happened so
15 far amongst yourselves or with anyone else during this
16 lunch break. Do not permit anyone to discuss what
17 happened so far or try to talk to you about the case in
18 your presence. Don't talk to the lawyers, witnesses,
19 or the defendant about anything during this break, and
20 if you see us out there at lunchtime, we're going to
21 ignore you. Don't take it personally.

22 Don't go and visit or view the place where
23 this alleged crime was allegedly committed, or any
24 other place involved in the case, and please don't run
25 off to a library. Nobody does that anymore, or more

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1 importantly, Google. Don't Google anything about this
2 case. If you believe there was news coverage, ignore
3 it and put it out of your mind. You are not allowed to
4 research anything about this matter during your lunch
5 break. See you all at 2:00. Enjoy your lunch.

6 (Whereupon, the jury exited the courtroom.)

7 THE COURT: Anything for the record?

8 MR. PERRI: No, your Honor.

9 MR. BERGER: No, your Honor.

10 (Whereupon, a luncheon recess was taken.)

11 * * *

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A F T E R N O O N S E S S I O N

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THE CLERK: Case on trial continued,

6

Indictment Number 742N of 2014, People of the State of

7

New York vs. Daniel Ramos.

8

Let the record reflect all parties are

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present. The jury is not present at this time.

10

We have a substitution of the Spanish

11

interpreter. What is your appearance on the record?

12

We have had Carmen Knight.

13

THE INTERPRETER: Carmen Simeonide,

14

S-I-M-E-O-N-I-D-E.

15

MR. PERRI: Yes, your Honor.

16

MR. BERGER: Yes, ready.

17

THE COURT: Anything we need to put on the

18

record before we bring the jury in?

19

MR. PERRI: Your Honor, there is one matter

20

with regard to Rosario. It can be done with now or

21

after the jury.

22

THE COURT: Let's do it after.

23

We'll get the jury done and go into it.

24

(Whereupon, the jury panel entered the

25

courtroom.)

1 THE CLERK: Do both sides stipulate the
2 jurors are seated in the jury box?

3 MR. PERRI: Yes, your Honor.

4 MR. BERGER: Yes.

5 THE COURT: Welcome back, everyone. I hope
6 you enjoyed your lunch. Now the jurors will address
7 the jurors in the jury box. The law does require that
8 the assistant district attorney speak first. Remember
9 that what the lawyers say at any time is not evidence.
10 Thus, the questions they're about to ask you and the
11 answers you give are not evidence in this case.

12 MR. PERRI: Thank you, your Honor.

13 Good afternoon, ladies and gentlemen. Thank
14 you for coming back for the second half of your jury
15 service today on behalf of Madeline Singas, the Acting
16 District Attorney. Thank you for service. I'm sure
17 the Court and defense counsel do as well. This time is
18 a limited amount of time, a unique part of the trial.
19 The fact is, it is the only time you and I are going to
20 be directly interacting with each other, the only time
21 I get to ask questions. You get to give me answers.
22 You get to ask questions or raise issues. The most
23 important thing for the defense and People in this case
24 is that each of you be honest, forthcoming, truthful,
25 and bring up anything you believe is relevant to

1 anyone's consideration about whether or not you could
2 be fair and impartial, and take this entire process
3 seriously from the beginning of the trial all the way
4 through deliberations.

5 Now, you heard Judge Corrigan explain this is
6 a case that does involve child sexual abuse. That as
7 part of that, it's the People's intention that we're
8 going to have to call child witnesses in this case.
9 We're going to have to. I wanted to ask if anyone out
10 of this panel has a specific problem or issue with the
11 idea of the child testifying, and your role as a jury
12 is going to be to judge them on the credibility,
13 determine whether or not you believe the evidence they
14 provide in their testimony can be relied on by you in
15 deciding whether or not people reached their burden.

16 Ms. Tracy, do you have trouble with a child
17 testifying and listening to testimony?

18 PROSPECTIVE JUROR: No.

19 MR. PERRI: Do you believe a capable child is
20 capable of telling the truth?

21 PROSPECTIVE JUROR: Yes.

22 MR. PERRI: Do you believe a child could
23 testify to the truth of something, Mr. Miley?

24 PROSPECTIVE JUROR: Yes.

25 MR. PERRI: Mr. Neal, do you feel it would be

1 possible for a child to testify and rely on that
2 testimony of evidence?

3 PROSPECTIVE JUROR: Depending on the age.

4 MR. PERRI: If the Judge instructed you on
5 whether or not the child's testimony could basically be
6 credited and whether or not it could be sworn in at
7 this trial, would you follow the Judge's instructions?

8 PROSPECTIVE JUROR: I would.

9 MR. PERRI: Mr. Cammarano, do you have any
10 problems hearing a child testifying?

11 PROSPECTIVE JUROR: No.

12 MR. PERRI: Mr. Ruiz?

13 PROSPECTIVE JUROR: No, I do not.

14 MR. PERRI: Mr. Rubinic, do you have any
15 issues with child testimony and judging that along with
16 all of the other evidence the People present to you?

17 PROSPECTIVE JUROR: No problem.

18 MR. PERRI: Mr. Fischer?

19 PROSPECTIVE JUROR: No.

20 MR. PERRI: In the same vein, we are talking
21 about witnesses, if the People decide to have a
22 ten-year old child to take the stand, we do intend to
23 bring other civilians, expert, police officers,
24 detectives and medical personnel to testify in this
25 case. And the case of the People is hope to put in

1 front of you to prove the defendant's guilt beyond a
2 reasonable doubt. It isn't any one single facet to
3 rely on, but instead it is going to be a culmination of
4 multiple parts.

5 Ms. Bowen, would you be able to keep an open
6 mind, even if there is one piece of evidence you don't
7 agree with, you will weigh it to make a decision, and
8 as a whole case, you will wait until you hear all of
9 the evidence at the end of the case?

10 PROSPECTIVE JUROR: I believe so.

11 MR. PERRI: Would you agree there is a
12 difference between whether or not you give credit to
13 the witness's testimony, whether you find them
14 believable, truthful, accurate and whether you like
15 that person?

16 PROSPECTIVE JUROR: I'm not sure.

17 MR. PERRI: Do you have to like someone to
18 believe them?

19 PROSPECTIVE JUROR: No.

20 MR. PERRI: Mr. Diaz, do you have to like
21 someone to believe them?

22 PROSPECTIVE JUROR: No.

23 MR. PERRI: If we called a witness, in
24 particular, or didn't want to hang out with them after
25 the trial, at some point you could listen to them

1 fairly, honestly and possibly find them credible and
2 believe their testimony even if you didn't like them?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Mr. Ortega, even if you don't
5 like a personality or how they carry themselves, could
6 you listen to them factually testifying to make a
7 determination as to whether or not you give them
8 credit?

9 PROSPECTIVE JUROR: Yes.

10 MR. PERRI: Mr. McKnight, how about you?

11 PROSPECTIVE JUROR: Yes.

12 MR. PERRI: Do you have issues with a child
13 testifying or whether they are telling the truth?

14 PROSPECTIVE JUROR: No.

15 MR. PERRI: Now, as part of the process of
16 determining the credibility of a witness, whether an
17 adult, a police officer, whether a child, there is no
18 magical solution to determine whether one person is
19 telling the truth or not. That's what each of us does
20 every day in our lives, we try to understand if someone
21 is telling the truth to us or lying.

22 Now, Ms. Quinones, when you are dealing with
23 someone trying to decide whether or not you trust them
24 and whether or not you believe they are telling the
25 truth, do you look at their body language when speaking

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1 to you?

2 PROSPECTIVE JUROR: Yes.

3 MR. PERRI: Do you look at when -- what they
4 are saying is consistent?

5 PROSPECTIVE JUROR: Yes.

6 MR. PERRI: Do you look and figure out
7 whether or not they have reason to deceive you?

8 PROSPECTIVE JUROR: Yes.

9 MR. PERRI: If someone had something to gain,
10 would that influence you to be telling you the truth or
11 not?

12 PROSPECTIVE JUROR: No. Repeat that again.

13 MR. PERRI: If you realize someone has
14 something to gain by lying, would you be more skeptical
15 of what they are saying to you?

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: If someone had something to gain
18 by lying, would you be skeptical?

19 PROSPECTIVE JUROR: I think so.

20 MR. PERRI: If the person had nothing to
21 gain, would you take that into consideration? Would
22 you take that into consideration, Mr. Diaz?

23 PROSPECTIVE JUROR: Yes.

24 MR. PERRI: Mr. Rubinic?

25 PROSPECTIVE JUROR: Yes.

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1 MR. PERRI: Mr. Fischer?

2 PROSPECTIVE JUROR: Yes.

3 MR. PERRI: And except for the child witness
4 the People intend to call, they will be testifying, the
5 alleged victim in this case is testifying, especially
6 as an adult, would you find that traumatic or
7 disturbing about the contents of what is being
8 discussed?

9 Does anyone disagree children react
10 differently than adults would; that we would think it
11 is very disturbing. Does anyone think children would
12 react the same way adults do?

13 Ms. Cardona, does every child, you think,
14 react in the same way as every other child to something
15 traumatic?

16 PROSPECTIVE JUROR: No.

17 MR. PERRI: Does every adult, if they
18 observed that, would they think it is traumatic?

19 PROSPECTIVE JUROR: No.

20 MR. PERRI: Would you require whether a
21 witness, adult or child, react to something disturbing
22 or traumatic the same way you would react?

23 PROSPECTIVE JUROR: No.

24 MR. PERRI: You would treat each person as an
25 individual?

1 PROSPECTIVE JUROR: Yes.

2 MR. PERRI: Mr. Quinn, when attempting to
3 judge a person's credibility, when you are trying to
4 figure out to trust them, what do you do in order to
5 figure that out?

6 PROSPECTIVE JUROR: I look at -- I do look at
7 what they are trying to say, and I also look, I guess,
8 at their character about them, what they say and their
9 character.

10 MR. PERRI: Mr. Ortega, when the judge is
11 going to give you instructions at the end of the trial
12 that is perfectly acceptable and doesn't break any
13 rules, and the People have prepped witnesses, met with
14 the witnesses beforehand, spoken with witnesses that
15 I'm going to call to the stand, that we worked with
16 them before the trial, would you hold that against the
17 People? Would you hold that against me, the DA's
18 office, that we met with our witnesses and discussed
19 the case before we put them on the stand?

20 PROSPECTIVE JUROR: No.

21 MR. PERRI: Mr. Ortega, do you think it would
22 be strange, I would throw a bunch of random people on
23 the stand I have never spoken to?

24 PROSPECTIVE JUROR: No.

25 MR. PERRI: Mr. Rubinic, do you think it

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1 would be strange if I didn't speak to them, would that
2 be strange too?

3 PROSPECTIVE JUROR: Yes.

4 MR. PERRI: Do you hold anything against me
5 that I intend to call at trial, before they get up on
6 the stand and speak in front of a bunch of people;
7 would you hold that against us?

8 PROSPECTIVE JUROR: No.

9 MR. PERRI: Is there anyone here, the Judge
10 has given the instruction on reasonable doubt and the
11 People's burden that we have and we're the only ones
12 that carry a burden. We have to meet the defendant's
13 burden of proving the defendant's guilt beyond a
14 reasonable doubt. Does anyone feel they could not
15 follow the Judge's instructions and require the People
16 to go somewhere beyond, beyond reasonable doubt? We
17 have to get certainty. Even though the Judge has
18 instructed people act in life as human beings. We
19 rarely have absolute certainty about anything and yet
20 we still get on with our lives.

21 Is there anyone here who requires the
22 prosecution, the People in this case, to prove their
23 case to a certainty rather than beyond a reasonable
24 doubt?

25 Ms. Quinones, are you comfortable with the

1 burden being beyond a reasonable doubt?

2 PROSPECTIVE JUROR: Yes.

3 MR. PERRI: Ms. Cardona, would you follow the
4 instructions it is the People's burden of just beyond
5 reasonable doubt?

6 PROSPECTIVE JUROR: I don't see the
7 difference between.

8 MR. PERRI: The doubt has to be a real doubt,
9 there has to be a reason, something you can articulate.
10 It has to be something reasonable. The example
11 commonly given, used a couple of times, you go to bed,
12 you go to bed, look out the window, look into the yard,
13 the neighbor's yard and everything is dry, everything
14 is normal, you go to sleep. You wake up the next
15 morning, go to the front door, everything is soaking
16 wet in your yard, the street, the neighborhood.
17 Everything is soaking wet. What would you say happened
18 while you were asleep?

19 PROSPECTIVE JUROR: It rained.

20 MR. PERRI: Is it possible the fire
21 department came and hosed down the flooding, shooting
22 water everywhere, covering the street, plants; could
23 that be possible?

24 PROSPECTIVE JUROR: Unlikely.

25 MR. PERRI: Is it reasonable to say that's

1 what happened while you were asleep?

2 PROSPECTIVE JUROR: No.

3 MR. PERRI: That's what the difference is.

4 We're looking for individuals that can use their reason
5 and rely on the facts and instead of speculating or
6 guessing or imagining, dealing more in concrete
7 reality, if there is concrete reality, and you could
8 say a doubt, then there is a doubt. If it isn't
9 something like more imaginary, then the People would
10 have met their burden.

11 Now, after the case has been put before you,
12 then in respects, most difficult, I've been paying
13 attention for the entire trial, the difficult part then
14 is deliberations. Those of you who are selected to be
15 on the jury have to work with each other to come to a
16 unanimous verdict. And as the Judge instructed, a
17 unanimous verdict isn't the majority rules, the
18 majority wins. Each of you take an oath to be a juror,
19 has to promise that you will stand up for what you
20 believe in and that you wouldn't go along with the flow
21 in order to get out early.

22 Mr. Neal, if you were in the minority, when
23 you get back to deliberations, the majority goes
24 against you. What would you do in the deliberations to
25 convince the other side you are correct? Do you feel

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1 uncomfortable with the idea, you can't go with the
2 majority, you have to reason yourself and discuss it?

3 PROSPECTIVE JUROR: I don't normally go with
4 what other people say if I don't believe in that.

5 MR. PERRI: On the other hand, if you were --
6 would you be open though to if you were opposite of
7 what the majority was, would you be open to
8 reconsidering what you believe?

9 PROSPECTIVE JUROR: I would.

10 MR. PERRI: Even if the majority would listen
11 to them?

12 PROSPECTIVE JUROR: I would.

13 MR. PERRI: Would you listen equally as
14 members of the jury to someone you are back in
15 deliberations with?

16 PROSPECTIVE JUROR: Yes.

17 MR. PERRI: Now, the last thing I want to
18 talk about is the question of reality that everyone is
19 exposed to, police shows to some degree and the news to
20 some degree, and both at the present time painting very
21 different views of what it is like to be in a criminal
22 trial, what it is like to be part of the criminal
23 justice system and police officers generally. How do
24 people watch something like NCIS, or Law & Order, or a
25 cop show or mystery show. There are several hands

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1 here.

2 Mr. McKnight, do you understand that in a
3 criminal trial here it is very different than something
4 you see in Law & Order?

5 PROSPECTIVE JUROR: Yes.

6 MR. PERRI: You will follow the Judge's
7 instructions on how far the trial is conducted?

8 PROSPECTIVE JUROR: I would.

9 MR. PERRI: Does everyone realize it is not
10 pretty concise as it is on Law & Order and NCIS. It is
11 a half hour, and there are thousands of discoveries
12 that are made, evidence comes in a complete package and
13 the entire story is covered in an hour; do you
14 understand that's different, Ms. Quinones?

15 PROSPECTIVE JUROR: Yes.

16 MR. PERRI: Mr. Fischer?

17 PROSPECTIVE JUROR: Yes.

18 MR. PERRI: A couple of questions about
19 individual answers that you gave.

20 Mr. Ortega, both your children are in
21 universities?

22 PROSPECTIVE JUROR: Yes.

23 MR. PERRI: Both in college?

24 PROSPECTIVE JUROR: Both in college.

25 MR. PERRI: Studying?

1 PROSPECTIVE JUROR: Accounting and one is
2 going for nursing.

3 MR. PERRI: Mr. McKnight, how long are you
4 working as a carpenter?

5 PROSPECTIVE JUROR: Eighteen years.

6 MR. PERRI: Ms. Bowen, I'm not sure what kind
7 of law firm.

8 PROSPECTIVE JUROR: Immigration.

9 MR. PERRI: You did say that.
10 Thank you very much for your time.

11 THE COURT: Mr. Berger.

12 MR. BERGER: Good afternoon.

13 Good afternoon, members of the jury. Let me
14 introduce myself. My name is Michael Berger. I live
15 in Brooklyn, New York. I'm presently residing in Lake
16 Success. I've been in Nassau County or Long Island for
17 some time. Does anybody know me? I have a lot more
18 questions to ask and they're different.

19 While a number of you have not disqualified
20 yourself during Mr. Perri's questions, there is a
21 difference after some of the questions I ask you, that
22 you may decide you shouldn't be sitting here. That's
23 fine. There are no wrong answers. You could give an
24 answer which you might not be proud of. I'll ask for
25 emotional factors, prejudice. You might have

1 prejudice, as it would apply to this case and you might
2 not be proud of it. At least, if you tell us, then
3 both of us, you have that and you shouldn't be sitting
4 here and should be sitting on another case.

5 Let me point -- to start out with,
6 Mr. Ortega, in particular, but I'm talking to all of
7 you. If you have something you think you should add,
8 look, raise your hand and let me know.

9 Mr. Ortega, we all have an emotional side and
10 an intellectual side, correct?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: I'm asking the people on the
13 jury to use their intellect and judgment. I'm asking
14 you to pay attention to the witnesses, listen to what
15 the charge of the Judge is and then make a judgment.
16 There are emotional factors in this case and many
17 people -- we only have eleven jurors. We have gone
18 through well over one hundred people. A good number of
19 them had emotional issues. This is an allegation that
20 Mr. Ramos licked the vagina of a six-year old girl.
21 Mr. Ramos is Hispanic. People have prejudices against
22 Hispanics; would you agree that exists?

23 PROSPECTIVE JUROR: Yes.

24 MR. BERGER: Now, I don't know if any of you
25 have those prejudices. If you do, the slightest amount

1 and you want to talk about it up at the bench if you
2 are embarrassed not to do it publicly. The important
3 thing is to be honest about it. There are no wrong
4 answers. If you have such a prejudice, tell me.

5 Now, what I'm asking you, I can't ask you to
6 check your emotions at the door. What I can say to you
7 is to be conscious of the fact you have an emotional
8 side and something may creep up during the course of
9 the trial and trigger those emotions. You have to
10 assure me you could put that aside, not let it
11 interfere with your intellect; could you do that?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: You have to keep your voices up
14 so the court reporter can take everything down, and the
15 air conditioning is going and it is hard to hear up
16 front.

17 MR. BERGER: Mr. McKnight, would you do that?

18 PROSPECTIVE JUROR: Yes, I could.

19 MR. BERGER: When you say, you think you
20 could, you are not sure?

21 PROSPECTIVE JUROR: Yes, I could.

22 MR. BERGER: Is there anything you want to
23 hear, different testimony, Mr. McKnight?

24 PROSPECTIVE JUROR: I'm not sure I'm
25 comfortable giving an opinion out loud. Is there

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1 something I could tell you?

2 MR. BERGER: You could say it privately.

3 PROSPECTIVE JUROR: My opinion on a
4 certain --

5 THE COURT: You are not sure you can sit
6 here?

7 PROSPECTIVE JUROR: I have an opinion about
8 something that I'm not comfortable sharing with
9 everyone.

10 MR. BERGER: If your opinion is by the nature
11 of the charge, you have to understand, that's what the
12 trial is about. If that's what your concern is -- in
13 other words, there's a charge here. It is a charge.
14 There is no proof. Even if there's an indictment, all
15 that means is the judge said -- it's a piece of paper
16 making an accusation. It doesn't mean it's true.
17 That's why we have trials.

18 For example, Ms. Bowen, you may have a sense
19 that 75 percent of the cases that people are charged
20 with crimes, they're guilty, that would mean the other
21 25 percent are not, correct?

22 PROSPECTIVE JUROR: Okay.

23 MR. BERGER: I'm not saying you made this
24 study. I'm not saying anything. You could have an
25 opinion. Some people, any time anybody gets arrested,

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1 they're guilty. We had a gentleman sitting in one of
2 the panels yesterday. He said, where there's smoke,
3 there's fire. If they charged him, and there's an
4 indictment, he's guilty. That's kind of guilty. We're
5 trying to eliminate that. That gentleman couldn't sit
6 as a juror. What I'm asking you to do here is to
7 recognize that -- well, in the first case, let me say,
8 Ms. Fischer, you may have an opinion 75 percent of the
9 cases brought, the person is guilty. That would mean
10 25 they're not, correct?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: What I'm saying to you, we don't
13 decide cases based percentages. We decide it based
14 upon the merits of a particular case because you don't
15 do it in 75 percent or 25 percent, and that's why we
16 have individual jurors making individual judgments in
17 individual cases. That's why we are going into our
18 third day of a picking jury. We have over one hundred
19 people.

20 So, Mr. Diaz, do you understand if you don't
21 make a decision based --

22 PROSPECTIVE JUROR: I understand it might be
23 a little difficult.

24 MR. BERGER: What would be difficult?

25 PROSPECTIVE JUROR: Emotions might get into

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1 it.

2 MR. BERGER: You are telling me emotions
3 might get in your way?

4 PROSPECTIVE JUROR: I have two girls. It
5 might affect me.

6 MR. BERGER: You wouldn't be unique in
7 telling us that.

8 PROSPECTIVE JUROR: I know. I'm not sure.

9 MR. BERGER: Would it be fair to say maybe
10 you shouldn't sit on this kind of a case?

11 PROSPECTIVE JUROR: Well --

12 MR. BERGER: It doesn't mean you are not
13 good. It's not a flaw in your personality in any way.
14 You seem to have hesitation, correct?

15 PROSPECTIVE JUROR: Yes. I didn't want to go
16 further in the line, it happens. I don't want to go
17 further than it might happen later on.

18 THE COURT: Let me step in. We're all human
19 beings. We all have emotions, and there is no way for
20 you to completely check your emotions at the door.
21 What I need to know, what Mr. Berger needs to know,
22 what Mr. Perri needs to know, do you sit here now,
23 having the ability to understand that your decision
24 can't be based on an emotion? Your decision has to be
25 based on the testimony and the evidence that you find

1 credible and reliable. It doesn't mean you have to sit
2 there like someone having no emotion with regards to
3 what happened. Every case has emotions. What we need
4 to know, and it's not just you, it's everyone. We need
5 to know the emotion isn't going to take over for what
6 your job is if you are picked, which is to listen to
7 the testimony, look at the evidence, evaluate the
8 testimony, evaluate the evidence, decide if it's
9 credible, decide if the People have met their burden of
10 proof and then vote guilty or not guilty. That's what
11 I need to know.

12 Do you believe you could do that, Mr. Diaz,
13 or do you believe, as you sit here now, your emotion
14 will take over and you will say, I don't care, I didn't
15 believe anybody? This is a horrible case and my
16 emotions says vote a certain way. Are you going to do
17 that, or follow my instructions?

18 PROSPECTIVE JUROR: No, I could follow your
19 instructions.

20 THE COURT: And could you decide the case
21 based on evaluation of credibility and not have your
22 emotions take over, because that's the concern?

23 PROSPECTIVE JUROR: Yes.

24 MR. BERGER: You don't know how you will
25 react? You seem to have a hesitation here. You

1 wouldn't be the first one and you would be one of many,
2 many who excused themselves because the emotions, you
3 knew what the emotions were, this kind of case they
4 didn't want to sit. Do you have any doubt at all in
5 your mind that you could do that or perhaps maybe this
6 is something -- would it be fair to me if you are
7 sitting here and you have this emotional reaction --

8 PROSPECTIVE JUROR: I could do it.

9 MR. BERGER: Ms. Bowen?

10 PROSPECTIVE JUROR: I can't predict how I
11 would react. I believe I would, but, being put -- I
12 can't answer it definitive yes or no.

13 MR. BERGER: I can't ask how will you feel
14 three days from now. A lot of people have already
15 known this kind of case, they shouldn't sit, it will
16 effect them. They know it. I'm not asking you to tell
17 me how you feel a few days from now, or next week, or
18 two weeks.

19 How about Ms. Quinones, with the emotional
20 nature, would the emotional factor affect you?

21 PROSPECTIVE JUROR: I think so.

22 MR. BERGER: It might. Maybe you shouldn't
23 sit here.

24 PROSPECTIVE JUROR: Yes.

25 MR. BERGER: Who else feels the same way?

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1 PROSPECTIVE JUROR: I do.

2 PROSPECTIVE JUROR: I don't think it would be
3 fair to you or your client.

4 MR. BERGER: That's the kind of honest answer
5 I'm looking for. I appreciate what you are saying.
6 That's what we look for. Mr. Perri has his other
7 answers. We look --

8 THE COURT: Let me just step in. I've said
9 it many times, I'll say it again. No one is looking
10 for a particular answer. Everyone is looking for an
11 honest answer so that we can determine whether or not
12 this is an appropriate case for you to sit on as a
13 juror. There is no right answer, there is no wrong
14 answer. There's only honest answers. Thank you.

15 MR. BERGER: Does anybody else want to raise
16 their hand at this point and add their names to what
17 Mr. Neal has said and what Ms. Quinones said?

18 PROSPECTIVE JUROR: You know, I'm trying to
19 put my emotions aside. I know it's a hard case to have
20 to listen to a six-year old girl, that kind of
21 experience. I'm going to try.

22 MR. BERGER: You are making an assumption
23 that it's true. That's what we have juries for.
24 Nevertheless, still, the nature of the case is
25 something that troubles you?

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1 PROSPECTIVE JUROR: Not really. I am going
2 to try to put the emotions aside.

3 THE COURT: Again, let me step in, the
4 concept of emotions is very difficult when picking a
5 jury. Everyone has emotions. No one is going to come
6 in here and be a robot. If you are a robot, we
7 wouldn't need you. We would sit twelve robots and
8 twelve robots without emotion would make a decision.
9 That's not how it works in our system of justice.

10 Again, I'm not asking, nor is Mr. Berger
11 asking, or Mr. Perri asking that you check your
12 emotions at the door. What we are asking is whether or
13 not you will be able to decide the case based on your
14 evaluation of the testimony and the evidence, and apply
15 it to the law that I give to you and not sit there and
16 say, you know what, I don't know if that person was
17 credible or not, but my gut and my emotion has me so
18 overwhelmed this is what I'm going to say. That's what
19 we have to make sure doesn't happen. It could and
20 there's nothing wrong with saying that that is the
21 position you think you will be in. I don't want you to
22 all sit here because you have an emotional side, and
23 say you can't sit as a juror. Every juror has
24 emotions.

25 My question is, Mr. Ortega, do you want to

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1 sit on this case or not?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: All of you will be asked to
4 evaluate the testimony of witnesses.

5 Mr. Rubinic, you will be asked to sit and
6 listen to a witness who swears to tell the truth. Do
7 you think everybody swears to tell the truth, tells the
8 truth?

9 PROSPECTIVE JUROR: No.

10 MR. BERGER: Do you have opinion people have
11 gotten on the witness stand and lied?

12 PROSPECTIVE JUROR: On the witness stand?
13 I've only been on one jury. Can they, yeah.

14 MR. BERGER: Do you have an opinion, based
15 upon your life experience, people have gotten on the
16 witness stand, sworn to tell the truth and lied?

17 PROSPECTIVE JUROR: I would say, in my
18 opinion, it is, yes.

19 MR. BERGER: You seem reluctant about that.

20 PROSPECTIVE JUROR: I don't have the
21 experience of being in court. Do I feel that people
22 have? Yes.

23 MR. BERGER: How about police officers?

24 PROSPECTIVE JUROR: Yes.

25 MR. BERGER: Mr. Miley, you are a retired

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1 police officer?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Do you think police officers
4 have gotten on the witness stand, sworn to tell the
5 truth and lied?

6 PROSPECTIVE JUROR: I'm sure they have.

7 MR. BERGER: If I convince you police
8 officers in this particular case didn't tell the truth
9 and actually falsely testified, I could convince you
10 because you believe it's happened, correct?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: Does anybody disagree with
13 Mr. Miley's answer? Does anybody here think police
14 officers can get on the witness stand and lie? I know
15 some of you have a connection with friends. I'll get
16 to that later. If yes -- were you going to raise your
17 hand?

18 PROSPECTIVE JUROR: No.

19 MR. BERGER: Mr. Ruiz, do you remember
20 Mr. Perri started asking about people who didn't tell
21 the truth and you started to think about whether they
22 had any interest in their testimony, anything to gain;
23 do you remember? Do you understand that you, as a
24 juror, are only asked to consider if somebody didn't
25 tell the truth, not why they didn't. You are not

1 expected to be a psychologist or psychiatrist. People
2 go to therapists all their lives to find out what
3 motivates them. Sometimes people lie for the strangest
4 reasons. You are not expected to figure out why. It
5 would be improper for you to say to yourself, I can't
6 figure out why the person is lying; would you agree
7 with what I'm saying?

8 In this case they have to figure out motive.
9 Mr. Cardona, do you think you have to figure out motive
10 as to why somebody lied?

11 PROSPECTIVE JUROR: No.

12 MR. BERGER: Has anybody lied to you in a
13 lifetime?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: They didn't come up and say, I'm
16 going to tell you a lie.

17 PROSPECTIVE JUROR: No.

18 MR. BERGER: You have senses, body language,
19 look at what they say, specifically all of these little
20 things, whatever it is, and you can use that so it
21 wouldn't have to be obvious. Nobody is getting on the
22 witness stand and saying, I'm not going to tell you a
23 lie. Who does not feel they don't have the ability to
24 evaluate the testimony of a witness to see if he or she
25 is telling the truth? Does anybody feel they cannot do

1 it?

2 Mr. McKnight, could you do that?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Is what I'm asking you to do,
5 Ms. Bowen, is to start at point zero, and be just as
6 ready to disbelieve as to believe when a witness
7 testifies. You may believe, for example, or everybody
8 should tell the truth. I had many people tell me that.
9 Yes, they should, and it's a crime if they don't. You
10 already acknowledged that people have not told the
11 truth deliberately on the witness stand.

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: I'm asking you to start at point
14 zero, disbelieve as to believe. Now, you might believe
15 ninety percent of the time witnesses tell the truth,
16 ten percent they don't. Again, we're not deciding on
17 percentage. You may have a ton of witnesses who
18 testify here to fit in the ten percent. You have a
19 have ton of witnesses who fit in 90 percent; do you
20 understand?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERGER: That's why we judge each
23 individual witness on its own. Does anybody disagree
24 with Ms. Bowen's answer?

25 Would you agree, Mr. Rubinic, people make

1 false accusations against other people?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Sometimes true accusations?

4 PROSPECTIVE JUROR: Right.

5 MR. BERGER: We don't know which one fits in
6 here, do we? That's what this case is about. Do you
7 feel as if this is a serious case, you know that, the
8 nature of the charge. Are you prepared, as you sit
9 here now, to vote not guilty if they don't prove the
10 case?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: Are you prepared if they do
13 prove the case beyond a reasonable doubt --

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: Now, would you -- are you more
16 likely to vote guilty because this is such a serious
17 case then, let's say, a trespass case, something as
18 simple as a trespass case? Would you lean over
19 backwards to convict because of the serious charge more
20 so than in a simple trespass case?

21 PROSPECTIVE JUROR: Most likely.

22 MR. BERGER: That's not the law. You have to
23 treat every case the same. The burden in the case is
24 beyond a reasonable doubt. I'm just concerned you
25 might be more inclined to vote guilty here because the

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1 charges are so serious. Do you understand what I'm
2 saying?

3 PROSPECTIVE JUROR: If they prove he is not,
4 that I feel he is not guilty, or the evidence --

5 MR. BERGER: If they don't prove.

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Mr. Cammarano?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: Do you understand it is the
10 quality of the evidence that counts, not the quantity?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: It doesn't matter how many
13 witnesses they call. It's a matter of whether the
14 substance of the evidence that is produced, because
15 just as -- even though the judge allows the evidence,
16 allows people to testify, doesn't mean it has any
17 merit, right?

18 PROSPECTIVE JUROR: Right.

19 MR. BERGER: We have to separate out the weak
20 from the choir, so to speak, that's what your job would
21 be. Ms. Cardona, do you understand that?

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: It's the quality of the
24 evidence, not the quantity. Does everybody agree with
25 that?

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1 Ms. Cardona, do you think a police officer
2 has ever tricked, forced, coerced somebody to sign this
3 piece of paper, a statement, which they didn't say? In
4 other words, a false confession; do you?

5 PROSPECTIVE JUROR: In life, yes. Not to me
6 personally.

7 MR. BERGER: Do you think that has happened?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: If I have to urge that upon you
10 at the end of the case and you say that never happens,
11 I couldn't persuade you of that, correct?

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: How about you, Mr. Ortega, do
14 you think that has happened?

15 PROSPECTIVE JUROR: Yes.

16 MR. BERGER: Does anybody disagree with
17 Ms. Cardona's answers? Let me ask you this:
18 Mr. Ortega, and actually, all of you, you see Mr. Ramos
19 sitting here. If you were charged with this crime,
20 would you be satisfied with twelve people, with your
21 present frame of mind, judging you? In other words, as
22 you sit here now, is your frame of mind so fair that
23 you would want twelve Mr. Ortega's judging you if you
24 were sitting where Mr. Ramos was?

25 PROSPECTIVE JUROR: Yes, I would.

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1 MR. BERGER: You are sure?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERGER: Mr. McKnight, would you be
4 satisfied with twelve Mr. McKnight with your frame of
5 mind, judging you, if you were where the defendant is?

6 PROSPECTIVE JUROR: Yes.

7 MR. BERGER: Mr. Rubinic?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERGER: Mr. Fischer?

10 PROSPECTIVE JUROR: Yes.

11 MR. BERGER: Mr. Diaz?

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: Ms. Bowen?

14 PROSPECTIVE JUROR: Yes.

15 MR. BERGER: Is there something still you
16 want to tell the judge privately?

17 PROSPECTIVE JUROR: No, I'm okay.

18 MR. BERGER: If you were me, or Mr. Ramos,
19 you are comfortable, Ms. Bowen, when sitting in and
20 judging, correct?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERGER: Ms. Quinones, you indicated you
23 should not sit. I appreciate your answer.

24 PROSPECTIVE JUROR: I'm sorry. I feel I'm
25 distracted. That's all. I know it doesn't seem fair

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1 and impartial. I'm not looking to --

2 THE COURT: Come up at sidebar.

3 (Whereupon, there was a sidebar discussion
4 with the Court, counsel and the prospective juror, as
5 follows:)

6 PROSPECTIVE JUROR: With that one question, I
7 still have the length of this case. The distraction,
8 what I need to do to is take care of my children, if I
9 have to be home 4:30. What I did today to do that --

10 THE COURT: Understood.

11 MR. BERGER: Too much stress.

12 PROSPECTIVE JUROR: I get anxious to begin
13 with.

14 THE COURT: Don't worry.

15 No need to ask anymore questions of
16 Ms. Bowen. She'll be excused for cause.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: Thank you for letting us know.

19 (Whereupon, the proceedings resumed.)

20 MR. BERGER: Ms. Tracy, would you be
21 satisfied with twelve Ms. Tracy judging you if you were
22 sitting where Mr. Ramos was?

23 PROSPECTIVE JUROR: Yes.

24 MR. BERGER: Your mind is so fair?

25 PROSPECTIVE JUROR: I see how you

1 interrogate. You really get down with everybody. You
2 are making sure if they have any doubts, as it really
3 surfaces. I feel I would be fair.

4 MR. BERGER: You would feel comfortable with
5 twelve Ms. Tracy's judging you if you were sitting
6 there?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: Even though you have a son who
9 is a police officer, was a police officer, and now the
10 fire department?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: We all have admiration and
13 respect for police officers and firefighters. The
14 question is, in life sometimes police officers don't do
15 the right thing, correct?

16 PROSPECTIVE JUROR: Yes.

17 MR. BERGER: Mr. Miley, would you be
18 satisfied with twelve of you judging you if you were
19 the defendant?

20 PROSPECTIVE JUROR: Yes, I would.

21 MR. BERGER: Ms. Cammarano, how about you?

22 PROSPECTIVE JUROR: Yes.

23 MR. BERGER: Mr. Ruiz, Ms. Cammarano, in
24 addressing all of you, would you be upset if I have to
25 vigorously cross-examine a six or seven-year old on the

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1 witness stand?

2 PROSPECTIVE JUROR: Would I be upset at that?

3 No.

4 MR. BERGER: Do you expect it?

5 PROSPECTIVE JUROR: That's your job.

6 MR. BERGER: Thank you. Mr. Ruiz, would you
7 be satisfied with twelve Mr. Ruiz if you were the
8 defendant sitting in this case?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: You told me your brother-in-law
11 is a Suffolk detective?

12 PROSPECTIVE JUROR: Yes.

13 MR. BERGER: So, do you think detectives do
14 the wrong thing sometimes and take them unlawfully,
15 when really it wasn't, and it was coerced in some way?

16 PROSPECTIVE JUROR: It's possible.

17 MR. BERGER: Do you think it has happened?

18 PROSPECTIVE JUROR: It's happened.

19 MR. BERGER: You don't want to acknowledge
20 that or, I mean, you first said it's possible. Then
21 you said it happened. I'm wondering if your frame of
22 mind is such that you really don't want to accept that
23 as a fact of life, and I understand. You could believe
24 it happens 92 percent. Maybe it doesn't. Maybe it
25 happens one percent. You don't know whether it is one

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1 percent or 99 percent. I understand. You are
2 acknowledging it has happened.

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Mr. Cardona, would you be
5 satisfied with twelve of you judging you if you were
6 the defendant?

7 PROSPECTIVE JUROR: Yes.

8 MR. BERGER: Your frame of mind is fair?

9 PROSPECTIVE JUROR: Yes.

10 MR. BERGER: How about you, Mr. Quinn?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERGER: Ms. Cammarano, it's extremely
13 important. During the course of the trial, the
14 prosecution presents a piece of evidence. That's it,
15 the man is guilty, I don't have to hear anything else.
16 Do you understand that would be the wrong thing to do,
17 you have to listen to all of the evidence presented,
18 the arguments of counsel, the charge by the Judge, and
19 then start to consider? Because if you don't do that,
20 then everything you hear from that moment, or that
21 particular piece of evidence, will skew your judgment
22 in everything you hear and the idea is to remain
23 totally objective and neutral throughout the entire
24 case until such time the Judge gives you the case to
25 consider. Does everybody understand that, Mr. Ortega?

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1 PROSPECTIVE JUROR: Yes.

2 MR. BERGER: Mr. McKnight?

3 PROSPECTIVE JUROR: Yes.

4 MR. BERGER: Tell me what newspapers and
5 magazines you read and bumper stickers on your car.
6 I'm not interested in politics with respect to bumper
7 stickers.

8 Mr. Ortega?

9 PROSPECTIVE JUROR: D'Ario, a Spanish
10 newspaper. New York Times.

11 MR. BERGER: You said you went to college?

12 PROSPECTIVE JUROR: Yeah. I did two years
13 back in my country.

14 MR. BERGER: Where is that?

15 PROSPECTIVE JUROR: Guatemala.

16 MR. BERGER: Bumper stickers on your car?

17 PROSPECTIVE JUROR: No.

18 MR. BERGER: Mr. McKnight?

19 PROSPECTIVE JUROR: Post.

20 MR. BERGER: Magazines?

21 PROSPECTIVE JUROR: Fisherman.

22 MR. BERGER: Bumper stickers?

23 PROSPECTIVE JUROR: No.

24 MR. BERGER: You told us you have a six-year
25 old child, a girl?

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1 PROSPECTIVE JUROR: Yes.

2 MR. BERGER: This is what is alleged here.

3 PROSPECTIVE JUROR: Correct.

4 MR. BERGER: Is that too close to you,
5 putting the face of your daughter on the one who
6 testifies here and be sympathetic towards that witness?
7 Do you think that is a concern you will have?

8 PROSPECTIVE JUROR: I don't think so.

9 MR. BERGER: Should I have?

10 PROSPECTIVE JUROR: No.

11 MR. BERGER: Mr. Rubinic?

12 PROSPECTIVE JUROR: Daily News and New York
13 Post.

14 MR. BERGER: Any bumper stickers?

15 PROSPECTIVE JUROR: No.

16 MR. BERGER: Mr. Fischer?

17 PROSPECTIVE JUROR: New York Times, New York
18 Magazine. No bumper stickers.

19 MR. BERGER: What's your handicap?

20 PROSPECTIVE JUROR: Golf.

21 MR. BERGER: Mr. Diaz?

22 PROSPECTIVE JUROR: Cycle World and Motor
23 Friend.

24 MR. BERGER: Bumper stickers?

25 PROSPECTIVE JUROR: No.

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1 MR. BERGER: Ms. Tracy?

2 PROSPECTIVE JUROR: Magazines, Women's Day.

3 I have a bumper sticker, pray to rosaries every day.

4 MR. BERGER: Mr. Miley?

5 PROSPECTIVE JUROR: No bumper stickers. I
6 used to read Newsday. I don't read any papers anymore.

7 MR. BERGER: Mr. Cammarano?

8 PROSPECTIVE JUROR: ESPN, Sports Illustrated.
9 I used to read Newsday until they started bashing
10 teachers.

11 MR. BERGER: Mr. Ruiz?

12 PROSPECTIVE JUROR: Wall Street Journal. No
13 bumper stickers.

14 MR. BERGER: Ms. Cardona?

15 PROSPECTIVE JUROR: Newsday, no bumper
16 stickers.

17 MR. BERGER: Thank you very much.

18 THE COURT: Thank you, Mr. Berger.

19 All right, at this time I'll ask you to step
20 outside for five to ten minutes. Give the attorneys a
21 chance to see if any of you will be chosen as jurors in
22 this case. Please don't talk about the case while you
23 are outside.

24 (Whereupon, the jury exited the courtroom.)

25 THE CLERK: People, challenge for cause juror

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1 number one?

2 MR. PERRI: No, your Honor.

3 THE CLERK: Defense counsel, challenge for
4 cause, juror number one?

5 MR. BERGER: No.

6 THE CLERK: People, do you wish to exercise a
7 perempt challenge as to juror number one?

8 MR. PERRI: No, your Honor.

9 THE CLERK: Defense counsel, do you wish to
10 exercise a perempt challenge as to juror number one?

11 MR. BERGER: I do not.

12 THE COURT: Byron Ortega will become juror
13 number twelve, agreed?

14 MR. PERRI: Yes, your Honor.

15 THE COURT: Agreed, defense counsel?

16 MR. BERGER: Yes.

17 THE CLERK: Alternate seat number one, any
18 challenge for cause, juror number two?

19 MR. PERRI: No, your Honor.

20 MR. BERGER: No, your Honor.

21 THE CLERK: Not for cause, correct, for two?

22 MR. BERGER: Not for cause.

23 THE CLERK: Do the People wish to exercise a
24 perempt challenge as to juror number two for alternate
25 seat number one?

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1 MR. PERRI: No, your Honor.

2 MR. BERGER: Yes, I wish to exercise a
3 perempt challenge.

4 THE CLERK: Let the clerk get out the entire
5 question so the record is clean, as opposed to everyone
6 jumping in. She asked the question to the defense
7 attorney.

8 People, do you wish to challenge for cause,
9 juror number three?

10 MR. PERRI: No, your Honor.

11 THE CLERK: Defense counsel, do you wish to
12 challenge for cause juror number three?

13 MR. BERGER: No, your Honor.

14 THE CLERK: People, do you wish to exercise a
15 perempt challenge as to juror number three?

16 MR. PERRI: No, your Honor.

17 THE CLERK: Defense counsel, do you wish to
18 exercise a perempt challenge as to juror three?

19 MR. BERGER: Yes.

20 THE CLERK: Do the People have any challenge
21 for cause for juror number four?

22 MR. PERRI: No, your Honor.

23 THE CLERK: Defense counsel, challenge for
24 cause for juror number four?

25 MR. BERGER: No, your Honor.

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1 THE CLERK: People, do you wish to perempt
2 challenge as to juror number four?

3 MR. PERRI: No, your Honor.

4 THE CLERK: Defense counsel, do you have a
5 challenge?

6 MR. BERGER: No.

7 THE CLERK: Lawrence Fischer will be
8 alternate number one. Agreed, People?

9 MR. PERRI: Agreed.

10 THE CLERK: Agreed, defense counsel?

11 MR. PERRI: Yes.

12 MR. BERGER: Yes.

13 THE CLERK: Alternate number two, challenge
14 for cause, juror number five?

15 MR. PERRI: No, your Honor.

16 THE COURT: Defense counsel, juror number
17 five, challenge for cause?

18 MR. BERGER: I think it's close. I don't
19 think his answers were straight forward enough. I
20 realize it wasn't as assertive as some of the other
21 jurors who definitely didn't want to sit. I detected
22 some hesitation with Mr. Diaz. It would warrant, in
23 this particular case, to err on the side of excusing
24 him rather than keeping him.

25 MR. PERRI: The People would disagree with

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1 defense counsel's assessment of Mr. Diaz. When your
2 Honor spoke to him, he clearly and directly answered
3 your questions. He said you could do -- he said, I
4 could do also in response to some of defense counsel's
5 questions and defense counselor used terms like
6 hesitant and injecting that into the juror's answer.

7 THE COURT: I do have noted here the quote, I
8 can do it, after being asked again whether or not he
9 could sit as fair and impartial in this matter. I'm
10 going to deny the cause.

11 THE CLERK: People, do you wish to exercise a
12 perempt challenge as to juror number five?

13 MR. PERRI: No, your Honor.

14 THE CLERK: Defense counsel, do you wish to
15 perempt challenge as to juror five?

16 MR. BERGER: Yes, your Honor.

17 THE CLERK: People, do you have a challenge
18 for cause as to juror six?

19 MR. PERRI: Yes, your Honor.

20 MR. BERGER: Consent.

21 THE CLERK: People, do yo have a challenge
22 for cause as to juror seven?

23 MR. PERRI: Yes, your Honor.

24 MR. BERGER: Consent.

25 THE COURT: On consent.

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1 THE CLERK: People, challenge for cause as to
2 juror eight?

3 THE COURT: The Court will remove juror eight
4 based on the interaction we had with him at the bench.
5 We do not believe he would have the ability to properly
6 deliberate.

7 Do you have an objection to that, Mr. Berger?

8 MR. PERRI: No, your Honor.

9 MR. BERGER: No, your Honor.

10 THE CLERK: Challenge to cause, juror number
11 nine?

12 MR. PERRI: No.

13 THE CLERK: Defense counsel, challenge for
14 cause, juror nine?

15 MR. BERGER: No.

16 THE CLERK: People, perempt challenge juror
17 number nine?

18 MR. PERRI: Yes, your Honor.

19 THE CLERK: People, challenge for cause,
20 juror number ten?

21 MR. PERRI: No, your Honor.

22 THE CLERK: Defense counsel, juror number
23 ten?

24 MR. BERGER: No, your Honor.

25 THE CLERK: People, do you wish to exercise a

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1 perempt challenge for juror ten?

2 MR. PERRI: No, your Honor.

3 THE CLERK: Defense counsel, perempt
4 challenge, as to juror ten?

5 MR. BERGER: Yes, your Honor.

6 THE CLERK: People, have a challenge for
7 cause as to juror number eleven?

8 MR. PERRI: No, your Honor.

9 THE CLERK: Defense counsel, challenge for
10 cause, juror number eleven?

11 MR. BERGER: No, your Honor.

12 THE CLERK: People, do you wish to exercise a
13 perempt challenge?

14 MR. PERRI: No, your Honor.

15 THE CLERK: Defense counsel, perempt
16 challenge for juror number eleven?

17 MR. BERGER: No.

18 THE CLERK: Bradly Cammarano will become
19 alternate number two, agreed, People?

20 MR. PERRI: Yes, your Honor.

21 THE CLERK: Agreed, defense counsel?

22 MR. BERGER: Yes.

23 THE CLERK: People, challenge for cause,
24 juror number twelve?

25 MR. BERGER: Consent.

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1 THE COURT: I do have listed emotional,
2 completely affects me.

3 MR. PERRI: People consent.

4 THE COURT: Granted for cause.

5 THE CLERK: People, challenge for cause,
6 juror number thirteen?

7 MR. PERRI: No, your Honor.

8 THE CLERK: Defense counsel, as to juror
9 number thirteen?

10 MR. BERGER: No, your Honor.

11 THE CLERK: People, do you wish to exercise a
12 perempt challenge for juror number thirteen?

13 MR. PERRI: No, your Honor.

14 THE CLERK: Defense counsel, do you wish to
15 perempt challenge as to juror number thirteen?

16 MR. BERGER: Yes, your Honor.

17 THE CLERK: People, have a challenge for
18 cause for juror fourteen?

19 MR. PERRI: No, your Honor.

20 THE CLERK: Defense, challenge for cause
21 fourteen?

22 MR. BERGER: No, your Honor.

23 THE CLERK: People, do you wish to exercise a
24 perempt challenge as to juror fourteen?

25 MR. PERRI: No, your Honor.

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1 THE CLERK: Defense counsel perempt challenge
2 for juror fourteen?

3 MR. BERGER: No, your Honor.

4 THE CLERK: Virginia Tracy will be alternate
5 number three, agreed, People?

6 MR. PERRI: Yes, your Honor.

7 MR. BERGER: Agreed, defense.

8 THE CLERK: Agreed, defense counsel?

9 MR. BERGER: Yes, your Honor.

10 (Whereupon, the jury panel entered the
11 courtroom.)

12 THE CLERK: Jurors in the box, may I have
13 your attention, please. If I call your name, you have
14 been selected to serve on this jury and please remain
15 seated.

16 Juror number twelve will be Byron Ortega.
17 Alternate number one is Lawrence Fischer. Alternate
18 number two is Bradly Cammarano. Alternate number three
19 is Virginia Tracy. If I called your name, remain
20 seated. If I did not call your name, you are excused
21 from this panel with the thanks of this Court. Please
22 be careful stepping out of the box. The court officers
23 will tell you where to report next.

24 Are these remaining jurors satisfactory to
25 the People?

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1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Satisfactory to defense counsel?

3 MR. BERGER: They are.

4 (Whereupon, the jurors were duly sworn by the
5 clerk of the court.)

6 THE COURT: Welcome aboard everyone. You are
7 officially part of this sworn jury. If you recall, you
8 do not have to be back here in court until Monday
9 morning at 9:30. The officers will tell you where to
10 report. Please do not come into the courtroom until
11 you are instructed to come in by a court officer.

12 Before I let you go, now that you are sworn
13 members of the jury, it's important that you continue
14 the admonitions that you heard me give previously.

15 One, you must keep an open mind throughout
16 the trial.

17 Two, do not discuss the case amongst
18 yourselves or with anyone else during the trial. Do
19 not permit anyone to discuss this case in your
20 presence. Do not talk to the lawyers, witnesses or the
21 defendant about anything during the trial. And
22 remember, if any of us run into you out on the street,
23 we'll ignore you. Please do not take it personally.

24 Do not visit or view the place where the
25 charged crime was allegedly committed, or any other

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1 place involved in this case. And if there is news
2 coverage of the case, do not read, view, or listen to
3 any accounts or discussions of the case reported by
4 news media, and do not attempt to research any fact,
5 issue, or law related to this case whether by
6 discussion with others, by research in a library, or on
7 the Internet, or by any other means or source.

8 Enjoy the rest of your day. Have a great
9 weekend. Happy Mother's Day to those celebrating.
10 I'll see you all Monday morning.

11 (Whereupon, the jurors exited the courtroom.)

12 THE COURT: To the rest of you in the
13 audience, you are also free to go at this point. You
14 will have to report back to central jury. The officers
15 will give you your cards on the way out. Let me thank
16 you all for your patience and sitting here so
17 attentively. I'm sorry you didn't have a chance to get
18 into the box, but we no longer need your services.
19 Have a great rest of the day. Have a wonderful weekend
20 and Happy Mother's Day to all of you that celebrate.

21 (Whereupon, the jury panel exited the
22 courtroom.)

23 THE COURT: Mr. Perri, something for the
24 record?

25 MR. PERRI: The People are turning over to

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1 the Court and defense counsel a two-page document. It
2 is notes that Officer Boccio, who the People intend to
3 call, created himself, derived directly from other
4 documents that the People already turned over,
5 including the hearing minutes and other police
6 paperwork. We're turning it over to the Court and
7 defense counsel as additional Rosario.

8 MR. BERGER: Are these from Officer Boccio?

9 THE COURT: That's what was said. Do you
10 acknowledge receipt, Mr. Berger?

11 MR. BERGER: Yes, your Honor.

12 THE COURT: Anything else, People?

13 MR. PERRI: No, your Honor.

14 THE COURT: Anything else, Mr. Berger?

15 MR. BERGER: No, your Honor.

16 THE COURT: Let me give you a quick rundown
17 what will happen on Monday; my preliminary to the jury
18 before you all stand up to give your openings, is
19 pretty lengthy. It takes about 40 minutes to go
20 through my opening comments. Normally, after I do my
21 opening comments, depending how everyone is looking, I
22 will give them a break at that point or go through the
23 first opening and then give a break.

24 Mr. Perri, I'm not holding you to it. Do you
25 have an idea approximately how long your opening will

1 be? If you don't, that's okay.

2 MR. PERRI: Approximately, 30 minutes.

3 THE COURT: Mr. Berger, any idea
4 approximately how long your opening will be, if you are
5 making an opening?

6 MR. BERGER: I'm making an opening. It won't
7 be terribly long. If it was five to ten minutes, that
8 would be longer than I expect. I'm not sure yet. It's
9 usually brief.

10 MR. PERRI: Thirty would be the outer.

11 THE COURT: You should have witnesses
12 prepared to go on for the morning because we will get
13 to them. Let me see if I talk about what we need to
14 discuss.

15 MR. BERGER: It depends upon what Mr. Perri
16 says in his opening.

17 THE COURT: I do not allow jurors to take
18 notes, Mr. Berger. Do you have a strong opposition to
19 that?

20 MR. BERGER: No.

21 THE COURT: I don't have anything else in
22 advance of Monday.

23 MR. PERRI: As far as scheduling, the People
24 would have three civilians prepared to testify on
25 Monday. I would assume that would take up the whole

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1 day.

2 THE COURT: If it doesn't, then it doesn't.

3 MR. PERRI: Thank you, your Honor.

4 MR. BERGER: With respect to the Rosario
5 material provided to me, we had a hearing, I believe,
6 in which Officer Boccio testified.

7 THE COURT: Okay.

8 MR. BERGER: Those were not turned over to
9 me.

10 MR. PERRI: They were created by Officer
11 Boccio in reviewing his own materials, police
12 paperwork, grand jury minutes, created by him sua
13 sponte.

14 MR. BERGER: He wrote these notes out today
15 after looking at the documents, the other documents.

16 THE COURT: I imagine in anticipation of
17 getting ready to testify. Do I have that accurate?

18 MR. PERRI: Yes. He was not instructed to do
19 so, but he did so. He wasn't instructed to do so, but
20 he did so.

21 MR. BERGER: The notes obtained there --

22 THE COURT: You can cross-examine him about
23 it.

24 MR. BERGER: Are they going to provide it to
25 me?

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1 THE COURT: Take it.

2 MR. PERRI: All of the materials that Officer
3 Boccio was examining in preparation for testimony that
4 he used today to make that list of information, those
5 notes, those two pages that the People have turned over
6 have already been turned over. They're included in the
7 Rosario packet and turned over, I believe, every single
8 one prior to the hearing that Officer Boccio looked at
9 it today except for the hearing minutes, which both
10 sides have a copy of.

11 THE COURT: Thank you. Anything else?

12 See you all Monday.

13 (Whereupon, the trial was adjourned to May
14 11, 2015.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

8 -----X

9 May 11, 2015
262 Old Country Road
Mineola, New York

10 B E F O R E:

11 HONORABLE TERESA K. CORRIGAN,
12 Acting Supreme Court Justice

13 A P P E A R A N C E S:
14 (As Previously Noted)
15

16 * * * * *

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19 THE CLERK: Case on trial continued,
20 Indictment Number 742N of 2014, People of the State of
21 New York vs. Daniel Ramos.

22 Let the record reflect all parties are
23 present. The jury is not present at this time.

24 Are the People ready?

25 MR. PERRI: Yes, your Honor.

1 THE CLERK: Defense counsel?

2 MR. BERGER: I'm not sure. I've just been
3 handed a note from my client. Yes, I'm ready.

4 THE COURT: The first order of business, the
5 Court received a note. It's been marked Court Exhibit
6 Number IV.

7 It reads as follows: Dear Judge Corrigan,
8 I'm writing this letter to request to be excused from
9 jury duty because of the condition of my pregnancy at
10 this time. I thought I would be strong enough to serve
11 as a juror on this case, but since Thursday, May 7th, I
12 have been experiencing stomach pains due to my
13 ulcerates colitis that has been controlled for the past
14 eight months until last week. Since this could be a
15 serious complication of pregnancy, my doctors and
16 myself cannot believe I can be a juror on a criminal
17 trial at this time in my life. I hope you understand
18 my situation. Thank you.

19 It is signed by juror number seven. Her name
20 and address is on the letter that is part of the Court
21 Exhibit.

22 You have reviewed it?

23 MR. PERRI: Yes, your Honor.

24 THE COURT: Did you review it, Mr. Berger?

25 MR. BERGER: I did.

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1 THE COURT: It's the matter where that --
2 wherein I told you it was highly likely that who was
3 sworn in as juror number seven would likely be seeking
4 to get off for medical reasons. We picked three
5 alternates for that reason.

6 At this time, Mr. Berger, are you willing to
7 substitute alternate number one for juror number seven?

8 MR. BERGER: I am.

9 MR. PERRI: Yes.

10 THE COURT: Do you see any reason why the
11 juror needs to be called in and questioned further?

12 MR. BERGER: No, your Honor.

13 THE COURT: People?

14 MR. PERRI: No, your Honor.

15 THE COURT: I don't see a reason to bring her
16 in here. We were fully aware. Both parties are
17 satisfied with the information provided to them. We'll
18 substitute juror number seven with alternate number
19 one. Please thank juror number seven for her time and
20 service here. If she has questions and wants to come
21 in, I'll hear from her now before we bring in the rest,
22 otherwise, the officer can just do the substitution.

23 Anything for the record, People, before we
24 bring the jury in?

25 MR. PERRI: Prior to the openings, the People

1 have two evidentiary issues they would like to bring to
2 the Court's attention to ensure it's proper to discuss
3 them in the opening.

4 The first, your Honor, we have involves the
5 medical records the People intend to introduce into
6 evidence, as well as the testimony of the sexual
7 assault nurse examiner, Nurse McAllister, of Nassau
8 University Medical Center. That during the SANE exam
9 that Mya Ramirez received at the medical center after
10 the alleged incident took place, the first step of that
11 examination is to take a history from the patient.
12 Nurse McAllister took a history from Mya, separate from
13 her mother, and in order to understand and to guide the
14 treatment and diagnosis and how to conduct the
15 examination for sexual assault, the nurse asked what
16 happened to you, to Mya Ramirez. Mya Ramirez's
17 response was noted in the medical records.

18 And also, according to Nurse McAllister's
19 testimony and preparation, was that she stated that
20 Danny licked my coochie. She then asked Mya what she
21 meant by a coochie and Mya Ramirez pointed at her
22 vaginal area.

23 In People vs. Ortega, Court of Appeals case,
24 15 NY3d 610, 2010, the Court of Appeals found that not
25 only does the business record exception apply in

1 criminal trials with respect to hospital records, but
2 the Court noted that upholding that the identities
3 disclosed in medical records can be relevant and
4 properly admitted as evidence at a criminal trial, when
5 that identity of the alleged assailant is connected to
6 a discharge plan for requirements for safety plan.

7 The Court of Appeals specifically in Ortega,
8 although, the Ortega was a domestic violence case, in
9 coming to its decision noted that in cases that
10 involved either domestic violence or child sexual
11 abuse, or child physical abuse, that the identity of
12 the assailant became relevant to the fact whether or
13 not and how the patient may be discharged, and whether
14 or not the patient would require additional psychiatric
15 treatment.

16 The People intend to also call as a witness
17 Crystal Ramirez, who will testify that Daniel Ramos did
18 have repeated contact with the children, and, in fact,
19 had babysat and watched the children on several
20 occasions.

21 It's the People's position, not only is the
22 factual allegation that someone licked Mya Ramirez's
23 vagina area is relevant to the germane diagnosis and
24 treatment, and therefore, it is admissible, but also
25 the identity of Daniel Ramirez, as Danny, according to

1 Mya, would be relevant as it would have affected
2 whether or not the hospital would be able to discharge
3 Mya back into the care of her family.

4 The holding on Ortega has been completely
5 applied, so I'll hand up People vs. Pham, P-H-A-M,
6 2014, Third Department case, 180 AD3d. In that case,
7 which involved sexual abuse, that any information that
8 was given related to diagnosis and treatment of
9 patients noted again to be admissible except when it
10 related to safety plan or discharge plan. That case
11 also noted that there was no confrontation cause issue,
12 that this was non-testimonial evidence to be received
13 by the Court.

14 And secondarily, with the specific factual
15 allegation of that Mya Ramirez was licked, that in
16 People vs. Bailey, 252 AD2d, the Appellate Division of
17 the Third Department factually, in a similar case,
18 allowed on the specific issue, allowed for the medical
19 records to contain the fact that the victim had been
20 sucked on her neck, noting that it was germane to the
21 treatment and diagnosis during the sexual assault
22 evidence collection and treatment by the hospital that
23 was conducted by the nurse examiner, your Honor.

24 That's the first application by the People to
25 be allowed to reference that testimony in their

1 opening, and if a proper foundation be laid at trial to
2 have that evidence admitted, your Honor.

3 THE COURT: Mr. Berger.

4 MR. BERGER: Is the prosecutor representing
5 to the Court that this Nurse McAllister is going to be
6 coming in to testify?

7 MR. PERRI: Yes, your Honor.

8 MR. BERGER: If the case is cited to allow
9 the identity, apparently, because they're going to
10 require additional psychiatric treatment, I have not
11 heard a representation from the prosecutor that, in
12 fact, if she received any psychiatric treatment.

13 THE COURT: It's not limited to psychiatric
14 treatment, as I read the case.

15 MR. BERGER: Well, the basis of why Mr. Perri
16 is offering it to the Court.

17 THE COURT: I believe I heard a release plan
18 and safety plan.

19 MR. PERRI: Yes, your Honor, that was one of
20 the considerations which makes it germane to the
21 treatment, is that it answers the question for the
22 healthcare professional of whether or not additional
23 treatment, such as psychiatric and psychological
24 treatment would be required, not that it necessarily
25 had to be provided.

1 THE COURT: I understand.

2 MR. BERGER: Judge, I have nothing further.

3 THE COURT: People, the first application to
4 be allowed to reference SANE in your opening statement,
5 based on case law provided, and the law, as I
6 understand it, is granted at this time.

7 Next application.

8 MR. PERRI: The next application is with
9 respect to testimony the People intend to elicit from
10 Crystal Ramirez regarding excited utterances and
11 outcries by her daughter, Mya Ramirez.

12 As it is the People's intention to call
13 Crystal Ramirez, as she will testify that she entered
14 the kitchen of her apartment and immediately upon
15 entering the kitchen of her apartment, found her
16 daughter Mya Ramirez standing directly in front of the
17 defendant with her pants and underwear down at her
18 feet. That, Ms. Ramirez, the mother screamed, and
19 yelled what is going on here? Words to that effect.
20 And that Mya immediately, in response to that, while
21 the defendant was still present in the kitchen, before
22 the mother grabbed her child, pointed at the defendant
23 and said, he licked my coochie, and the People intend
24 to ask both -- ask Crystal Ramirez questions eliciting
25 that testimony.

1 In support of that application, the People
2 have handed up People vs. Carfora, C-A-R-F-O-R-A, 59
3 AD3d, 751, 2010, a Second Department case; where it
4 noted that prompt outcry testimony was proper in child
5 abuse cases. The witness in that case was the mother
6 of multiple victims.

7 It is also noted in that case it was the
8 People's intention, although not in the opening, to ask
9 Ms. Ramirez, to the effect that it was proper, for the
10 mother to testify about behavioral changes they noted
11 in their child after the alleged incident.

12 The People also handed up People vs. Sheldon,
13 also a Court of Appeals case, 8081 NY3d 614, from 2004,
14 with the Court of Appeals found that prompt outcry
15 applied even when there was a much longer delay between
16 an elderly mother and adult daughter overnight when the
17 facts and circumstances tended to support that finding.

18 In People vs. Knapp, a Fourth Department
19 case, 139 AD2d, 931, although it's another department,
20 it's directly on point, and I found no controverted law
21 in the Second Department where the sexually abused
22 children excited utterances to their mother were found
23 to be admissible at trial, that these excited
24 utterances describing their abuse, even though the
25 mother did ask questions, were found admissible.

1 The Court referenced the youth of the
2 individuals and the proximity to the time and of the
3 abuse, and it noted that it did not matter whether or
4 not the child was found to be swearable.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Berger.

7 MR. BERGER: I don't have a disagreement with
8 the law cited by Mr. Perri. I do wish to bring the
9 following to the attention to the Court. It seems to
10 present a much larger issue than whether or not
11 Mr. Perri can make these comments in the opening
12 remarks.

13 I have been provided, I believe, by Mr. Perri
14 with all of the Rosario material that is required to be
15 turned over to me. What I want to point out to the
16 Court is, other than these comments by the mother,
17 there is not one interview of Mya Ramirez, where notes
18 were provided to me, which leads me to believe nobody
19 interviewed her.

20 Now, I assume, Mr. Perri did. I have
21 received no notes from him. I could, therefore, infer
22 that maybe he didn't interview her, no detectives
23 interviewed her. Nothing in this -- in the information
24 provided me so far reflects any interview conducted of
25 Mya Ramirez except that the mother has led this child

1 to say from the very inception -- you heard the
2 hearing. You heard what happened when Police Officer
3 Boccio came to the scene. The girl is standing or
4 sitting right next to the mother and the mother tells
5 the police officer, what supposedly happened to Mya,
6 and she is sitting there because her mother had just
7 said this. She's a six-year-old girl.

8 I know the People will ask you to allow her
9 to be sworn. Not only do I don't think she shouldn't
10 be sworn, she's not nine years old. I don't think -- I
11 don't think she should be allowed to testify here.
12 There are limits as to what somebody can testify in a
13 court of law when you have consequences as great as
14 this. When the defendant is facing a charge that
15 carries twenty-five years, he's never been arrested
16 before in his life, and this girl makes this claim
17 based upon the mother seeing something that she thought
18 was outrageous and now influenced this girl into saying
19 these things, and a year-and-a-half has gone by and no
20 interviews, no statements, and if there were
21 interviews, maybe the detectives didn't make notes, but
22 that's not what is really the protocol these days for
23 interviewing children.

24 I have reason to believe I have a case older
25 than this one, where they take the children and

1 interview them on tape with a questioner who knows
2 something about questioning children in these kinds of
3 cases, so there's a neutral individual and no bias
4 occurring interviewing a child that can be easily
5 misled.

6 We know about the McMartin case in
7 California, which set off an extreme of change of
8 protocol with respect to children in these sex cases.

9 THE COURT: Can you stay on point and respond
10 whether or not the excited utterance and outcry should
11 be allowed in.

12 MR. BERGER: I said I had no argument with
13 the principle of law that Mr. Perri is citing. What
14 I'm asking the Court to do is consider that while he is
15 assuming there was, in fact, such excited utterance,
16 I'm making the Court aware of the fact this is the
17 situation. I don't know that this girl ever said this
18 without being influenced by her mother in everything
19 she has done here. This is quite frightening to my
20 client, and I would ask the Court to consider whether
21 or not he is even going to allow Mya to testify in this
22 case. Thank you.

23 THE COURT: I'm sticking with the application
24 that the People made. Mr. Perri, your witness will be
25 allowed to testify to excited utterances and/or outcry.

1 However, if you want to describe it, assuming the
2 questions are proper, proper foundation is laid, if
3 there needs to be a foundation laid, and assuming all
4 of the other rules of evidence are followed, I'm not
5 going to disqualify that testimony at this time.

6 With regards to whether or not this child is
7 swearable, that is a bridge we're going to cross after
8 we get to opening statements. I had a jury that
9 actually showed up ten minutes early for their start
10 time today. They were all here by twenty after nine
11 because the Court advised we were going to start as
12 soon as possible after they were all here for the 9:30
13 start time, and we couldn't start unless they were all
14 here. Unfortunately, we were the only ones that
15 prevented this case from not going forward at 9:30 when
16 this jury was all actually here and ready to go. I can
17 only imagine we wouldn't have the same response
18 tomorrow, when they get here on time, they wait for an
19 hour before they come to the courtroom.

20 Unless there is anything else, I would like
21 to get to my opening remarks to them, and I would like
22 to get to opening statements. Anything further?

23 MR. PERRI: No, your Honor.

24 THE COURT: Mr. Berger.

25 MR. BERGER: There are other issues. I think

1 they can wait until --

2 THE COURT: Do they impact on your opening?

3 MR. BERGER: No.

4 THE COURT: Fair enough.

5 (Whereupon, the jury entered the courtroom.)

6 THE CLERK: Both sides stipulate all sworn
7 jurors are present and alternate number one has
8 replaced juror number seven, and alternates two and
9 three have moved up into seats alternate one and two,
10 People?

11 MR. PERRI: Yes, your Honor.

12 THE CLERK: Defense?

13 MR. BERGER: Yes, your Honor.

14 THE COURT: Good morning, everyone. I hope
15 those of you who celebrated Mother's Day had a very
16 nice day yesterday. The sun did shine, so it
17 cooperated, so I'm glad for everyone that it did that.

18 Let me apologize for the delay in getting
19 started today. You will see throughout the trial
20 process there are details that can't be avoided. This
21 morning I had some matters I needed to attend to. I
22 apologize for keeping you waiting, keeping the
23 attorneys waiting.

24 Members of the jury, we're about to continue
25 with the trial of the case of the People vs. Daniel

1 Ramos. Before continuing with the trial, I'm going to
2 take about thirty minutes to explain to you various
3 stages of the trial and what you may expect to see and
4 hear during the trial so that you may better understand
5 what is taking place.

6 I'll also remind you of some basic principles
7 of law that apply to this and all criminal trials. At
8 the conclusion of the case, I'll remind you of the laws
9 that apply to the case, to define the crimes charged,
10 explain the law to the charged crimes, and list for you
11 the elements of each charged crime that the People must
12 prove beyond a reasonable doubt.

13 Remember, during jury selection I explained
14 the terms, the elements of a charged crime refers to
15 the various parts of our laws after the ^^^/KREUT and
16 charged crime, plus the identification of the person as
17 the person who committed that crime.

18 As you can see, a court reporter is writing
19 in shorthand everything that is being said. What she
20 takes down is called the record of the trial.
21 Sometimes, you will see a witness use his or her hands
22 to illustrate something.

23 For example, a witness may say that an object
24 was this long, using his hands the way I did just then.
25 Normally, you would then hear the lawyer or the Court

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1 say something like, let the record indicate, that the
2 witness is saying about one foot. We do that because
3 sometimes it becomes necessary to have the court
4 reporter read back what a witness says and what the
5 witness was indicating. If someone does not state
6 orally for the record what a witness is indicating
7 silently with his or her hands, when that portion of
8 the record is read back, we will not know what the
9 witness was indicating. You, of course, will be able
10 to see what the witness is indicating and make your
11 judgment accordingly.

12 The trial formally begins with what the law
13 calls an opening statement by the assistant district
14 attorney. The law requires the assistant district
15 attorney to make an opening statement to set forth the
16 evidence that he expects to prove the crimes charged
17 beyond a reasonable doubt.

18 After the opening by the assistant district
19 attorney, the lawyer for the defendant will make an
20 opening statement. After the completion of the opening
21 statement, the assistant district attorney will proceed
22 with the presentation of evidence.

23 Remember, the indictment is not evidence. It
24 is simply a piece of paper stating the charges. The
25 defendant has pled not guilty to those charges, and the

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1 trial is to decide whether or not the defendant is
2 guilty.

3 Remember, also, what the lawyers say at any
4 time is not evidence. The lawyers are not witnesses.
5 What I say is not evidence. I am not a witness.

6 Let us remember that you must decide the case
7 on the evidence. You heard me say this before, but it
8 is worth repeating. Evidence is testimony of
9 witnesses, the stipulations agreed to by the parties,
10 and physical objects received in evidence. Testimony
11 is, of course, the most common form of evidence and
12 comes from the questioning of a witness by the lawyers
13 and sometimes by the Court.

14 Remember, a question by itself is not
15 evidence. It is the question with the answer that is
16 the evidence. So, you are not to conclude from a
17 question alone that anything I assumed in the question
18 to be true is true no matter how detailed or specific
19 the question is; nor are you to draw any inference
20 either favorable or unfavorable to either side from the
21 content of a question alone.

22 You must consider the question with the
23 witness's answer and decide whether you find the answer
24 believable and accurate, because again, it is the
25 question with the answer that is the evidence.

1 Next, evidence may come in the form of a
2 stipulation. A stipulation is information which both
3 parties agree to present to the jury as evidence
4 without calling a witness to testify to the
5 information.

6 And lastly, evidence may come in the form of
7 physical objects, such as documents, photographs,
8 clothing, or even a chart. When a lawyer is
9 questioning a witness, and in a question refers to a
10 physical object for the first time, the object is
11 normally marked with a number or letter of the alphabet
12 so we can more easily identify the object and refer to
13 it. That procedure is very helpful in keeping track of
14 physical objects. It's the responsibility of the court
15 reporter to physically write an exhibit number or
16 letter on the object, or on a label that is then
17 attached to the object.

18 Sometimes, depending on the type of physical
19 object, it may be too difficult or inconvenient to mark
20 the object, and the object is deemed marked, rather
21 than actually marked. It is the responsibility of
22 court personnel to keep an accurate listing of the
23 exhibits.

24 Normally, when the object is first referred
25 to, a lawyer will ask the Court to have the object

1 marked for identification. If the People make the
2 request and the Court grants the request, the object is
3 deemed or marked with a number.

4 If the defendant makes the request and the
5 Court grants the request, the object is deemed or
6 marked with a letter of the alphabet. That just helps
7 us to remember who introduced the exhibit.

8 Sometimes to save time during the trial I
9 have certain physical objects deemed or marked for
10 identification before the trial begins, and you will
11 then only hear the lawyer refer to the object by its
12 number or letter.

13 An item deemed or marked for identification
14 is not evidence, and it is, therefore, not available
15 for your inspection and consideration. Sometimes a
16 lawyer will ask the Court to receive the object in
17 evidence. When a lawyer does that, the other lawyer is
18 at that moment permitted to ask the witness questions,
19 designed to determine whether the object can, under the
20 law, be admitted in evidence. If I grant the request
21 to admit the object in evidence, then the object
22 becomes evidence, and it is available for your
23 inspection and consideration.

24 If, at the time a physical object is received
25 in evidence, it is too small for all of the jurors to

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1 see, at a convenient moment, I'll have the court
2 officers show the object to you.

3 Further, if during your deliberations you
4 wish to see an object received in evidence, you may do
5 so by simply asking the Court to see the object.

6 Under our law, a witness may review documents
7 and other materials pertaining to the case before the
8 witness testifies here at the trial.

9 Also, under our law, a lawyer or an
10 investigator for a party may speak to a witness about
11 the case before the witness testifies here at the trial
12 and may ask the witness the questions that will be
13 asked at the trial. As such, there is nothing legally
14 improper about the pretrial review of documents or
15 talking to lawyers.

16 After the People have completed the
17 introduction of their evidence, the defendant may, but
18 is not required, to present evidence. I remind you
19 throughout these proceedings, the defendant is presumed
20 to be innocent. As a result, you must find the
21 defendant not guilty unless when the evidence presented
22 at this trial you conclude that the People have proven
23 the defendant guilty beyond a reasonable doubt. That a
24 defendant does not testify as a witness is not a factor
25 from which any inference unfavorable to the defendant

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1 may be drawn. The defendant is not required to prove
2 that he is not guilty. In fact, the defendant is not
3 required to prove or disprove anything. To the
4 contrary, the People have the burden of proving the
5 defendant guilty beyond a reasonable doubt.

6 That means, before you can find the defendant
7 guilty of a crime, the People must prove beyond a
8 reasonable doubt every element of the crime, including
9 that the defendant is the person who committed that
10 crime.

11 The burden of proof never shifts from the
12 People to the defendant. If the People fail to satisfy
13 their burden of proof, you must find the defendant not
14 guilty. If the People satisfy their burden of proof,
15 you must find the defendant guilty.

16 Now, what does our law mean when it requires
17 proof of guilt beyond a reasonable doubt? The law uses
18 the term proof beyond a reasonable doubt to tell you
19 how convincing the evidence of guilt must be to permit
20 a verdict of guilty.

21 The law recognizes in dealing with human
22 affairs there are very few things in this world that we
23 know with absolute certainty. Therefore, the law does
24 not require the People to prove a defendant guilty
25 beyond all possible doubt. On the other hand, it is

1 not sufficient to prove that the defendant is probably
2 guilty.

3 In a criminal case, the proof of guilt must
4 be stronger than that. It must be beyond a reasonable
5 doubt. A reasonable doubt is an honest doubt of the
6 defendant's guilt for which a reason exists, based upon
7 the nature and the quality of the evidence. It is an
8 actual doubt, not an imaginary doubt. It's a doubt
9 that a reasonable person acting in a matter of this
10 importance would be likely to entertain because of the
11 evidence presented, or because of the lack of
12 convincing evidence.

13 Proof of guilt beyond a reasonable doubt is
14 proof that leaves you so firmly convinced of the
15 defendant's guilt that you have no reasonable doubt of
16 the existence of any element of the crime, or of the
17 defendant's identity as the person who committed the
18 crime.

19 In determining whether or not the People have
20 proven the defendant's guilt beyond a reasonable doubt,
21 you should be guided solely by a full and fair
22 evaluation of the evidence. After carefully evaluating
23 the evidence, each of you must decide whether or not
24 that evidence convinces you beyond a reasonable doubt
25 of the defendant's guilt. Whatever your verdict may

1 be, it must not rest upon baseless speculations. Nor
2 may it be influenced in any way by your bias,
3 prejudice, sympathy, or by a desire to bring an end to
4 your deliberations or to avoid an unpleasant duty.

5 If you are not convinced beyond a reasonable
6 doubt that the defendant is guilty of a charged crime,
7 you must find the defendant not guilty of that crime.
8 If you are convinced beyond a reasonable doubt that the
9 defendant is guilty of a charged crime, you must find
10 the defendant guilty of that crime.

11 Now, each witness, by whomever is called, is
12 first examined, that is, asked questions by the lawyer
13 who calls the witness to testify. That is called
14 direct examination. When the direct examination is
15 completed, the other lawyer is permitted to ask
16 questions of that witness. That is called
17 cross-examination. You may then have redirect
18 examination and recross examination, but under our law,
19 the scope of such additional examination is limited on
20 the theory that the lawyers had sufficient opportunity
21 on their original direct or cross to ask what they
22 wanted to.

23 The lawyers are responsible for questioning
24 the witnesses. The Court may, at times, ask a witness
25 a question, but you, as jurors, may never ask questions

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1 of the witnesses.

2 Additionally, you, as jurors, will not be
3 allowed to take notes during this trial. Let me tell
4 you the reason why.

5 One: It is often difficult to take notes and
6 at the same time to look at the witness and fully
7 comprehend and appreciate what the witness is saying
8 and how the witness is saying it. Since you are the
9 finders of the facts who are responsible for evaluating
10 the believability and accuracy of a witness's
11 testimony, it is important that you be able to both
12 fully comprehend what a witness is saying and how the
13 witness is saying it without the distraction of taking
14 notes.

15 Two: There is no real need for notes since
16 every word of each witness is recorded by the court
17 reporter, and during deliberations upon your request,
18 the testimony can be read back to you.

19 The lawyers or the Court may take notes. The
20 difference is this: The lawyers and the Court are not
21 the finders of the facts. They are not responsible for
22 evaluating the witnesses in order to come to a verdict
23 of guilty or not guilty. The lawyers and the Court
24 have other functions for which some note taking may be
25 helpful. You are not to attach any importance to the

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1 lawyers or the Court taking or not taking notes. You
2 must decide this case solely on the evidence and the
3 law as I give it to you.

4 Now, as the Judge of the facts, you, alone,
5 determine the truthfulness and accuracy of the
6 testimony of each witness. You must decide whether a
7 witness told the truth and was accurate or instead
8 testified falsely or was mistaken. You must also
9 decide what importance to give to the testimony you
10 accept as truthful and accurate. It is the quality of
11 the testimony that is controlling, not the number of
12 witnesses who testify. There is no particular formula
13 for evaluating the truthfulness and accuracy of another
14 person's statement or testimony.

15 As I have said, you bring to this process,
16 all of your varied experiences. If you thought about
17 what I have said, I'm sure you now agree with me in
18 life you frequently decide the truthfulness and
19 accuracy of statements made to you by other people.
20 The same factor used to make those decisions should be
21 used in this case when evaluating the testimony. At
22 the end of the trial, I will give you some examples of
23 those factors that you may consider during your
24 deliberations.

25 Now, there are and I'm sure you appreciate,

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1 rulings for all stages of a trial. The rules for the
2 presentation of evidence stage range from how a
3 question may be asked to whether a question may be
4 asked, to whether the answer to a question is properly
5 responsive and from how evidence may be introduced to
6 when evidence may be introduced. Part of my job is to
7 enforce those rules. Some of these rules you may
8 understand when you hear the ruling, but some of them
9 you may not understand unless you have studied the law.
10 The rules have been carefully developed over hundreds
11 of years for the sole purpose of guaranteeing a fair
12 and orderly trial.

13 In other words, the rules are not designed to
14 determine whether the evidence you hear and see is true
15 or false, accurate or inaccurate. It's for you, not
16 me, to evaluate the evidence and make that decision.
17 The rules are designed to ensure that the evidence you
18 hear and see is relevant and in a form that permits you
19 to evaluate it fairly.

20 For example, often a lawyer will ask the
21 Court to receive in evidence items such as a
22 photograph. You are, under our law, to have your
23 photograph admitted into evidence. It must be shown
24 that the photograph is a fair and accurate depiction of
25 the area in question at the time in question. If that

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1 is done, it does not matter on the question of
2 receiving the photograph in evidence, who took the
3 photograph, or when it was done. Sometimes with a
4 photograph taken a long time after the time in
5 question, a witness will testify that some of the items
6 depicted in the photograph were not present at the
7 scene at the time in question, unless those items would
8 disport a fair representation of the area at the time
9 in question. The photograph may still be received in
10 evidence with, of course, the understanding that
11 certain items in the photograph were not at the scene
12 at the time in question.

13 Now, during the presentation of evidence, the
14 lawyers for the parties will in turn, be asking
15 questions of the witness. During the questioning, a
16 lawyer is not permitted to make comments on a witness's
17 answer or on the case. Although, that always happens
18 in TV shows and movies because they only have a short
19 period of time to convey the story. It doesn't happen
20 here. In real trials it's not allowed. In a real
21 trial it is at the end of the case that lawyers are
22 permitted to address the jurors in what is called a
23 summation, and it is then that the lawyers make
24 comments on the witnesses, the testimony, and the other
25 evidence.

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1 During the questioning of a witness, if a
2 lawyer believes a question or some other presentation
3 of evidence is not in accord with the rules of law,
4 that lawyer will object. That objection creates a
5 question of law which under the law of the court, as
6 the judge of the law, I will decide whether the rules
7 permit the question or evidence objected to.

8 Also, at times a lawyer will make an
9 application concerning evidence or law, and the Court
10 will decide that matter also.

11 Making objections or applications is a
12 lawyer's duty. Please do not be concerned or annoyed
13 by them, or draw any unfavorable inference because of
14 them. They take place at every trial. An example of
15 why it would be improper to draw unfavorable inference
16 from objections is as follows:

17 Remember, I explained for a photograph to be
18 introduced into evidence that there must be testimony
19 that the photograph is a fair and accurate depiction of
20 the scene at the time in question. If there is no such
21 testimony, a lawyer has the right to object to the
22 introduction of that photograph. After all, a
23 photograph that does not fairly and accurately depict
24 the scene at the time in question, would be of no value
25 to you, the jury. In one way or another, all objects

1 address similar issues as to whether the matter
2 objected to presents relevant and fair evidence in a
3 form that permits you to evaluate it fairly.

4 At the same time you are not to read into
5 anything a lawyer not objecting to the introduction of
6 evidence. A lack of objection to the introduction of
7 proposed evidence is simply an expression of an
8 understanding that the law permits the proposed
9 evidence to be presented to the jury. When an
10 objection is made to a question, if I overrule the
11 objection, the answer will be evidence. If I sustain
12 the objection, there is no answer, and therefore, no
13 evidence. Because, remember, a question alone is not
14 evidence.

15 Sometimes when I sustain an objection, an
16 answer may have been inadvertently given anyway. In
17 that case, whether or not I formally say that the
18 question and answer is stricken from the record, you
19 must disregard it. I tell you now, that question and
20 answer is stricken. You must disregard it as if it
21 were never said.

22 Also, as we have discussed and you may
23 appreciate the Court has an obligation under the laws
24 of New York to make sure that certain fundamental rules
25 of law are followed even if one of the lawyers does not

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1 voice an objection. So, on occasion, you may hear the
2 Court say sustained, or words to that effect, even
3 though the lawyer has not voiced an objection.

4 Needless to say, any ruling by the Court on
5 an objection of counsel or otherwise, is based on the
6 law and expresses no opinion about the facts of the
7 case, or whether the defendant is guilty or not guilty.
8 Remember, you are responsible for those decisions.

9 From time to time during the course of the
10 trial, there will be conferences at the bench with
11 counsel, and if they become prolonged, it may be
12 necessary for the Court to excuse the jury to the jury
13 room. These conferences deal with questions and
14 matters of law or scheduling of the trial that are my
15 responsibility. When the occasion does arise, when
16 there are conferences at the bench or outside your
17 presence, I do ask your indulgence and ask you to be
18 patient and tolerant while the conferences are
19 conducted.

20 Let me talk to you quickly about summations
21 and charge. Upon completion of the introduction of
22 evidence, the lawyers will address you in a closing
23 statement of what the law calls a summation.

24 Under our law, the defendant's lawyer must
25 sum up first, and the assistant district attorney must

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1 sum up last. What a lawyer says in summation is not
2 evidence. The summations, however, provide each lawyer
3 an opportunity to review the evidence presented and
4 submit for your consideration the facts, inferences,
5 and conclusions which they contend maybe properly drawn
6 from the evidence presented.

7 If you find that the evidence is summed up
8 and analyzed by a lawyer is accurate, and if you find
9 the inferences and conclusions that you are asked to
10 draw from such evidence is reasonable and logical, and
11 consistent with the evidence, you may adopt such
12 inference and conclusion.

13 After summations conclude, I'll instruct you
14 on the rules of law applicable to the case. Those are
15 the rules you must accept and follow. You will then
16 retire for your deliberations.

17 During your deliberations, your function as
18 jurors will be to decide what the facts are and to
19 apply to the facts, the rules of law that I set out.
20 You will determine what the facts are from all of the
21 testimony that you hear, the exhibits that are
22 submitted, and any stipulations the parties have agreed
23 to. Or in other words, you will decide the case on the
24 evidence. The conclusion you reach from determining
25 the facts and applying the law will be your verdict of

Judge's opening

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1 guilty or not guilty.

2 Now, as I have said, under our law, the first
3 juror selected is known as the foreperson. During the
4 trial the foreperson has the same responsibility as any
5 other juror. At the end of the trial, during the
6 jury's deliberations, we ask the foreperson to sign any
7 written note that comes from the jury. The foreperson
8 can, but does not have to chair the jury's
9 deliberations during that time.

10 When the jury has reached a verdict, guilty
11 or not guilty, the entire jury will be asked to come to
12 court. The foreperson will be asked whether the jury
13 has reached a verdict. If that foreperson says yes,
14 the foreperson then will be asked what the verdict is
15 for each charged crime considered in accordance with my
16 instructions and that entire jury will be asked whether
17 that is their verdict and each juror will answer yes or
18 no.

19 After that each juror may be asked
20 individually whether the announced verdict is the
21 verdict of that particular juror, and then upon being
22 asked, each particular juror individually will answer
23 yes or no.

24 Thus, in some of the stages of a criminal
25 trial there are the openings of the assistant district

Judge's opening

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1 attorney, followed by the defense attorney, the
2 presentation of evidence, the summations of each
3 lawyer, the final instructions from the Court to the
4 jury on the law and deliberations of the jury and the
5 verdict.

6 I've been giving you admonitions throughout
7 this process, each time you left the courtroom and have
8 gone home for the day. I'll remind you of my
9 admonitions. Please remember to keep an open mind
10 throughout the trial. You heard the attorneys explain
11 why this is important. You need to hear all of the
12 testimony before you start to consider what, if any,
13 verdict you should reach.

14 Additionally, you need to hear the law before
15 you should make that consideration. Please keep an
16 open mind throughout the trial. Do not discuss the
17 case amongst yourselves, or with anyone else during the
18 trial. The law does not allow you to do that. You are
19 only allowed to start discussing this case at the close
20 of the case, after all of the evidence is in,
21 summations are given, you hear the instructions on the
22 law, and the Court then tells you to deliberate. To do
23 so in advance, it may cause you to reach a premature
24 conclusion that is improper. The law does not allow
25 that.

Judge's opening

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1 Please do not discuss the case amongst
2 yourselves or with anyone else during the trial. Do
3 not permit anyone to discuss the case in your presence.
4 The reason for the rule, it is somewhat self-evident.
5 You need to get the evidence from this courtroom alone,
6 someone discussing this case in your presence, not
7 within this courtroom, may give you improper
8 information. You cannot leave your decision on that
9 information. Your decision can only come from the
10 evidence. Do not talk to the lawyers, witnesses, or
11 the defendant about anything during the trial.

12 Remember, if anybody sees you outside,
13 they're going to ignore you. Do not take it
14 personally. You may not visit or view the place where
15 the charged crime was allegedly committed, or any other
16 place involved in this case.

17 First, the reason for that you cannot be sure
18 the place is in the same condition as it was on the day
19 in question.

20 And second, even if it was in the same
21 condition, once you go to the place discussed in the
22 testimony to evaluate the evidence, in light of what
23 you see, you are no longer a juror. You have become a
24 witness, a witness to the scene. As a witness, you may
25 now have erroneous views of the scene that is not

Judge's opening

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1 subject to correction by either lawyer. That would not
2 be fair. You have promised to be fair. Please do not
3 visit the scene.

4 Additionally, any news coverage of the case,
5 do not read, view, listen for any accounts or
6 discussions of the case reported by the news media.

7 Do not attempt to research any fact, issue,
8 or law related to this case whether by discussion by
9 others, by research of the library, or by any other
10 means or source.

11 Your decision must be based solely on the
12 firsthand accounts of the evidence presented to you in
13 this courtroom. It may not be based on some reporter's
14 view or opinion, or upon your own independent research.
15 I trust you understand and appreciate the importance by
16 abiding all of these rules in accord with your oath and
17 promise to me you will do so.

18 So, a little bit of a delay today. Those
19 will happen from time to time. Hopefully, they will
20 never be as long as today's delay. I do ask you to
21 bring a book or magazine, or something with you to take
22 up your time when we do have these unforeseen delays.

23 Additionally, as you all know and you will
24 all break this morning. We can't start until you are
25 all here. You were all here early today. Thank you

Judge's opening

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1 for that. Please try to keep it up. We'll try to get
2 you into the courtroom as soon as we can once all of
3 the jurors are present; even one of you missing will
4 delay us from being able to start the proceedings.

5 A word to the alternates. You are both
6 expected to pay the same close attention to the case as
7 the first twelve jurors. The only difference between
8 the alternate juror and one of the twelve is that the
9 alternate does not know at this point whether the
10 juror, whether that juror will be called at some point
11 during the trial to substitute for one of the first
12 twelve. Just so everyone knows, that substitution can
13 only take place if some presently unforeseen
14 extraordinary emergency arises that makes it totally
15 impossible for one of the first twelve jurors to
16 complete the trial.

17 Our law does expect from this point forward
18 that first twelve jurors who begin the trial will be
19 the twelve jurors at the end of the trial. It will
20 take an extraordinary emergency for one of the two of
21 you to become a substitute. Should that occur, we'll
22 substitute you and we expect you to pay the same close
23 attention as everyone else.

24 That concludes my instructions to you at this
25 time.

People's opening

577

1 Mr. Perri, you may begin your opening
2 statement.

3 MR. PERRI: Thank you.

4 Good morning, ladies and gentlemen of the
5 jury. The evidence in this case, the facts it will
6 prove, the narrative I will outline for you, it won't
7 be complicated.

8 What the evidence will prove, beyond all
9 reasonable doubt, that may be disturbing. It may be
10 disconcerting. It might even be painful, disgust and
11 difficult to consider, but it won't be complicated. It
12 might be painful because this case is about sexual
13 abuse. The allegations involve a then 53 year-old man
14 having oral contact with a then six-year old girl. It
15 may be painful.

16 You will have a nearly eight, Mya Ramirez,
17 testify about this defendant pulling her pajama pants
18 down, pulling her underwear down, and then placing his
19 mouth on what she called then her coochie.

20 Painful, because the defendant was not a
21 stranger to Mya, wasn't a stranger to her mother. He
22 was a friend, somebody who babysat her.

23 Painful, because it happened where Mya should
24 have been safe. It happened inside her home, in the
25 kitchen.

People's opening

578

1 Painful, because in the statement, the
2 arresting officer, you will hear how this defendant
3 acted like it was no big deal, and said she will tell
4 you I raped her daughter. It was stupid. I only
5 licked her once. It is painful because this defendant
6 later admitted in a written statement, a statement
7 taken after Miranda warnings, his words, he tickled.
8 He tickled Mya, a six-year old girl. He tickled her
9 pussy with his mouth.

10 Ladies and gentlemen, this may be painful,
11 but not because it's complicated, not because it's a
12 mystery. It's painful because the evidence will show
13 it happened. The evidence will prove that this
14 defendant, on October 16, 2013, at 124 Park Avenue, in
15 Roosevelt, Nassau County, New York State, placed his
16 mouth on the vulva and/or vagina of Mya Feliciano
17 Ramirez, who at that time, was just six years old.

18 When you hear testimony from Mya's mother,
19 Crystal Ramirez, a single mother of two -- Mya has an
20 older brother, Sincere. Crystal lives with her
21 children in a one bedroom apartment, first floor, next
22 to a deli. The apartment has a porch that opens up to
23 what would normally have been a living room. It's
24 where Crystal sleeps because she gave the one bedroom
25 to the children.

kmm

People's opening

579

1 From the living room there is a door directly
2 into the kitchen and then off the kitchen is her
3 children's room and a bathroom. It's simple. It's
4 their home.

5 The Ramirez family, on the morning of October
6 16, 2013, like any other, Crystal will tell you she
7 made sure the children dressed in a uniform and on the
8 bus that day for school.

9 Later that morning she got some bad news. A
10 family friend, a man she had grown up with, who was
11 like a brother to her, he had died unexpectedly.
12 Understandably, Crystal was upset, and it was just
13 after she found out that information that the defendant
14 happened to stop by. Crystal had known the defendant
15 for years before October 16, 2013. The father of her
16 children, who's friends with the defendant's own son.
17 They were friends. He even helped them move once.

18 Crystal and the defendant hung out socially
19 in the months and year leading up to the alleged
20 incident in her home, and he watched her kids on
21 several occasions.

22 You will also learn from the evidence that
23 Crystal, her son, Sincere, and daughter Mya, do not
24 speak Spanish. They only speak English. During the
25 years she was friends with the defendant, she conversed

People's opening

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1 only in English with him.

2 That October day, the defendant pulled up on
3 the street near her apartment in a Nassau intercounty
4 express bus, or NICE bus, that he drove for a living.
5 He worked for years as a bus driver. Seeing Crystal
6 was upset, he asked, what was wrong. He gave her a
7 cigarette, and said, I will come back later after he
8 dropped the bus off. The defendant did come back later
9 that same day. He came back with a pack of cigarettes
10 and Long Island ice teas, hung out together in the
11 enclosed porch, both drinking and talked.

12 A few hours later, the children, Mya and
13 Sincere came home, went inside, they changed out of
14 uniforms. Mya put on a pair of pajama pants. He went
15 and played video games, PS3 Station while the sister
16 played with toys throughout the apartment.

17 Outside, while the defendant and Crystal were
18 on the porch, another person from the neighborhood
19 named Prince stopped by. Crystal stepped out onto the
20 steps and had a cigarette with him. During that time
21 the defendant went inside. Sincere will tell you the
22 defendant came into the living room. At that time Mya
23 was there as well. Mya complained of a toothache, and
24 the defendant offered to take a look at her. He then
25 took Mya into the kitchen and closed the door behind.

People's opening

581

1 him. Then Mya herself will tell you, the defendant
2 didn't look at her tooth. He didn't help her with his
3 homework. He didn't fix her a snack. The defendant,
4 instead, lowered the pajama pants, pulled down the
5 underwear and put his mouth on her privates, on her
6 vagina.

7 As this was happening, Crystal will tell you
8 that Prince left. He started to wonder where the
9 defendant was. She went inside. No defendant. She
10 went into the living room, saw her son Sincere playing
11 video games. No defendant, no Mya. She figured the
12 defendant had gone to the bathroom and had to go
13 through the kitchen to get there. She walked without
14 thinking anything into the kitchen, opening the door.

15 When Crystal opened that door to the kitchen,
16 instead, she found her daughter standing there,
17 standing there directly in front of the defendant with
18 her pants and underwear down to her legs and Crystal
19 yelled, what is the F going on in here? And the
20 defendant turned around and ashamed, rubbing his
21 forehead. Immediately, Mya pointed at the defendant
22 and stated to her mother, he licked my coochie.

23 From the living room, as soon as Crystal --
24 he heard his mother scream. He immediately started to
25 yell, what's going on? Sincere got up, looked over

People's opening

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1 into the kitchen and observed what his mother saw. His
2 sister was standing there with her pants down about her
3 feet. Crystal and Sincere, even Mya will tell you her
4 mother did what any woman would expect. She grabbed
5 her daughter, grabbed her daughter, left the room and
6 went back into the living room, pulled up her pants,
7 pulled up her underwear to try to get away from the
8 defendant. Just get out, she said to the defendant.
9 The defendant pled to Crystal. He said, don't believe
10 Mya. It wasn't what it appeared to be. He begged her
11 not to call the police.

12 As soon as he left the apartment, she locked
13 the door. She called the police and reported to them
14 what her daughter told her happened. The Nassau County
15 police did respond.

16 Police Officer Boccio will testify to
17 arriving with his partner, Officer Wiggan and speaking
18 to Crystal and Mya. The defendant was still there in
19 the parking lot of the building, leaning on his car.

20 Officer Boccio approached the defendant,
21 approached with the gun in their holster, not drawn.
22 He approached with handcuffs on his belt, approached
23 him alone. He walked over and part of the initial
24 investigation, asked the defendant in English, what is
25 going on here? The defendant responded in English.

People's opening

583

1 She is going to say, I raped her daughter. Officer
2 Boccio responded, he was going to need more than just
3 that. The defendant then said words that knocked
4 Officer Boccio over. It was stupid. I licked her once
5 in the bedroom. Understandably, the defendant was
6 taken into custody. He followed the police direction
7 without any problems, eventually placed in a marked
8 police vehicle.

9 Detective Baron and Special Victims Squad,
10 who was notified about what was going on at 124 Park
11 Avenue and Officers Boccio and Wiggan took the
12 defendant to the special victims squad located in
13 Bethpage. They took them there for further
14 questioning.

15 Around the same time, an ambulance brought
16 Crystal, Mya, and Sincere to Nassau County Medical
17 Center. Once at the hospital they met with Detective
18 Baron. They meet with him separately. They also,
19 during the time at the hospital, met with Nurse Cathy
20 McAllister, who is a sexual assault nurse examiner, who
21 was on-call that evening.

22 As you read in the medical records and you
23 will hear in Nurse McAllister's testimony, she first
24 took a history from Mya before she conducted her exam,
25 and during that interview, Mya had been separated from

1 her mother, reported to her that Danny licked my
2 coochie. Nurse McAllister questioned what she meant by
3 coochie, and Mya then pointed down to the vagina.

4 The exam continued. They took off her
5 clothes and put on a gown. Nurse McAllister took
6 custody of her pajama pants and her underwear that she
7 was wearing when she got changed. The same ones, the
8 evidence will prove, the defendant took down before
9 placing his mouth on her genitalia.

10 Nurse McAllister will explain how with the
11 evidence collection kit she swabbed Mya multiple times
12 in various locations for many areas of her body,
13 various locations so as to collect any dried secretions
14 and possible genetic evidence that might have been left
15 on her by her assailant.

16 Most importantly, you will hear that she
17 swabbed Mya's vulva. Each swab is dried, sealed in an
18 envelope to prevent contamination from evidence. Mya's
19 underwear was sealed in a separate envelope. All of
20 the envelopes were together again, sealed inside of an
21 evidence collection box.

22 Ms. McAllister turned over the box to
23 Detective Baran. Detective Baran invoiced that
24 evidence under a case number and returned it to the
25 special victims squad. When Detective Baran returned

People's opening

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1 to the special victims squad that night, the defendant
2 was already there and was alone in the restroom,
3 looking at the computer table, chair. Officer Boccio
4 was outside and observed the defendant through the
5 glass, opening the door.

6 You will hear the defendant was offered food,
7 brought pizza, given water, used the laboratory during
8 this time, and later Detective Baran was convening in
9 English.

10 You will also come to know, although, the
11 defendant does speak and comprehend in the English
12 native language, Spanish, you will hear from Detective
13 Pacheco how the defendant was given his rights, warned
14 of his rights in Spanish. Detective Pacheco, by
15 reading the technical language of the Miranda warnings
16 to the defendant, you will view the card that was used
17 to read those warnings to the defendant and you will
18 see in response to the question in Spanish whether or
19 not he understood those rights. The defendant wrote
20 out the word si, S-I, meaning, yes, and signed his
21 name. In response to the question in Spanish, do you
22 want to answer the questions? Again, the defendant
23 wrote out the word si. S-I, saying yes.

24 You will see how the defendant signed a
25 rights card a third time after reading the declaration

People's opening

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1 that he freely and voluntarily is waiving his right to
2 be silent, waiving the right to have an attorney
3 present, and he wanted to talk with the police. You
4 will see the signature of Detective Baran, Detective
5 Pacheco witnessing the defendant's action. The
6 defendant met with a Detective Baran, spoke with him in
7 English.

8 The carrying detective on the case, Detective
9 Baran, nevertheless gave the defendant the option to
10 give the statement to Detective Baran in English or to
11 give the statement in Spanish. You will hear the
12 defendant chose to try to get a statement in length
13 with Detective Baran. As he gave the statement,
14 Detective Baran will testify to you that he had no
15 problems communicating with the defendant in English.
16 He was prepared to bring in Detective Pacheco if any
17 such problems arose. He explained the process. He
18 used typing down the defendant's words to compose a
19 written version of the statement printed out. He had
20 given it back to the defendant who read it out loud,
21 the first paragraph, in front of Detective Baran, and
22 then read the rest to himself.

23 You will see where the defendant himself
24 pointed out the Social Security number in English in a
25 sentence, it was incorrect, and had the changes made by

kmm

People's opening

587

1 himself and then initialed it.

2 You will see the defendant himself pointed
3 out to Detective Baran that Detective Baran, a typo,
4 and missed, a girl, after the word little in a sentence
5 three-quarters of the way down.

6 A handwritten correction was entered, and the
7 defendant initialed that location as well. Although,
8 the evidence will show that this defendant, in Nassau
9 County, the bus driver understood the English version
10 of his statement, but Detective Baran was to come back
11 into the arrest room, to come back in and translate the
12 statement in its entirety, to read it entirely out loud
13 to the defendant so he was given a full and fair
14 opportunity to understand and appreciate his statement
15 before he signed and adopted it is true.

16 Detective Pacheco will come, and he will
17 testify he translated it. He translated it in its
18 entirety through each of the corrections the defendant
19 made on that page. The evidence will show beyond a
20 reasonable doubt the defendant signed that statement,
21 signed it freely. He did so after knowingly and
22 voluntarily waiving his rights and understood in both
23 English and Spanish. The defendant, he was not
24 coerced, threatened. He wasn't tricked or promised
25 anything in order to get that statement.

kmm

People's opening

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1 Detective Baran will read you that statement.
2 In it the defendant acknowledges he notes it is
3 Crystal, what he calls her husband. He was missed
4 coming off the hill on October 16, 2013. He
5 acknowledges that while he was there, children came
6 from school. He does include self disparaging comments
7 like bad mother or clarifies her. He explains how he
8 helps the children with homework and he's worried
9 they're being exposed to cigarette smoke.

10 Then he states on October 16th he did go
11 inside to use the bathroom, and on his way he
12 encountered Mya, and then the defendant claims in a
13 statement Mya was there when he came out of the
14 bathroom and told her, I'm going to tickle you. The
15 defendant's statement goes on to explain after saying
16 that to her, he pulled down her pants and pulled down
17 her underwear and tickled her pussy with his mouth.

18 After the statement was read to the
19 defendant, including all of those words in entirety by
20 Detective Pacheco, in Spanish, the defendant signed
21 that statement. Detective Pacheco signed that
22 statement. Detective Baran signed that statement.
23 Now, no amount of regret can undue this conduct.

24 Once called, the evidence will show the
25 defendant did have -- someone asked the defendant if he

People's opening

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1 would write an apology letter to Crystal and Mya. The
2 defendant had agreed to do it. He wrote out an apology
3 letter in Spanish, in his own hand. Although, no one
4 translated the questions or directed Detective Baran
5 about writing out the apology letter, and you will see
6 that letter and Detective Pacheco will translate that
7 letter for you in sum and substance. It says the
8 defendant is sorry. He's asking for pardon. He never
9 intended to do any harm to any of them, especially the
10 kids. He hopes she will drop the charges against him
11 after reading the letter, never meant to do any harm.
12 He hopes she does drop the charges. Just like the
13 letter, the defendant's own statement, the written
14 statement, acknowledges he made a big mistake and is
15 sorry.

16 Ladies and gentlemen, the evidence will prove
17 beyond a reasonable doubt that placing his mouth on a
18 sick-year old girl's genitals is something much more
19 than stupid, much more than a mistake, beyond a
20 reasonable doubt, it's criminal.

21 And long after, separate and part from what
22 Mya said, what Crystal said, and what the defendant was
23 alleged to have said to Officer Boccio and Detective
24 Baran, you will also hear about how Mya's underwear and
25 vulva swab taken by Nurse McAllister became extremely

People's opening

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1 relevant after the defendant agreed to give a DNA
2 sample to Detective Baran. That's what is called a
3 buccal swab. You can swab inside his mouth to collect
4 DNA, that along with the sex test, the box was put
5 together by Nurse McAllister, submitted to Nassau
6 County office, and it was sent there for forensic
7 genetics to be examined and tested, all of the
8 evidence.

9 The experts in this field, he will explain to
10 you full DNA profile of Mya and of the defendant.
11 Mr. Chillseyzn will testify then the first finding he
12 was able to make was a test of the vulva swab taken by
13 Mya Ramirez indicated on October 16, 2013. There was
14 saliva present on Mya's vulva, and additionally, on
15 that swab. Mr. Chillseyzn found male genetic material.
16 Although, not enough present in that particular swab to
17 generate a DNA profile. The evidence will clearly show
18 along the male DNA from a male, cells was present on
19 Mya's vulva.

20 Now, next Mr. Chillseyzn will explain the
21 turned his attention to Mya's underwear, explaining and
22 examining her underwear, he found two saliva stains.
23 He found it on the inside of the material and in
24 explaining, he found on the clothing area within, it
25 was mostly Mya's DNA.

kmm

People's opening

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1 Mr. Chillseyzn will explain since the
2 clothing is in contact with Mya's own body, her skin,
3 it was reasonable to expect the majority of DNA comes
4 from Mya's own skin cells, whether or not saliva is
5 also deposited on that same cloth, but along with Mya's
6 DNA in that second saliva stain examined, there was
7 additional DNA. Again, it was male DNA.

8 Through various forms of testing, you will
9 hear Mr. Chillseyzn was able to determine what the
10 major donor of that male DNA was, DNA profile
11 consistent with the defendant. Let me explain that to
12 you.

13 There is one statistical analysis done by the
14 Nassau County Medical Examiner's Office. They will
15 testify that after they performed that analysis, they
16 were able to determine it was a one in 175 million
17 chance that it is anyone else other than this
18 defendant, who was a major donor of that male DNA found
19 inside the saliva, found inside Mya's underwear. The
20 evidence will show there were not 175 people in the
21 kitchen at 124 Park Avenue, Roosevelt.

22 You will note that when Crystal opened the
23 door and Sincere heard his mother scream, the evidence
24 will show there were not 175 million men that were
25 found standing in front of Mya and her pants and

People's opening

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1 underwear down, as she pointed and said she, he licked
2 my coochie.

3 The evidence will show there was one man
4 there, this defendant, the one man Sincere saw take his
5 sister into the kitchen and close the door. This
6 defendant, whom the evidence will show, admitted that
7 he did it. He admitted that he licked Mya to Officer
8 Boccio, and again, freely, voluntarily, and after
9 having been read his rights, to Detectives Baran and
10 Pacheco. He tickled her pussy with his mouth. There
11 was one man there, this defendant, the man who
12 apologized, who after he had been caught, said he meant
13 no harm.

14 At the close of the trial, I will come back
15 to you. I'll ask you to follow all of the evidence, to
16 look at it as a whole, to listen to the testimony of
17 Mya, Crystal, Sincere, to consider the physical
18 evidence explained by Christopher Chillseyzn, to read
19 and hear the defendant's own statements of admission
20 and written statements of law enforcement. I'll ask
21 you to return a verdict of guilty, guilty of criminal
22 sexual act in the first degree and guilty of
23 endangering the welfare of a child. I'll ask you to
24 return a verdict of guilty because the evidence demands
25 it beyond all doubt. I'll ask you to return a verdict

Defense's opening

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1 of guilty because it's not complicated. Thank you.

2 THE COURT: Thank you, Mr. Perri.

3 Mr. Berger.

4 MR. BERGER: Judge Corrigan, Mr. Perri,
5 Mr. Foreman, members of the jury. Everything that the
6 district attorney has just told you is not evidence.
7 It's what he hopes to establish here at this trial. He
8 likes to think it's simple, not complicated, and if you
9 believe his story, then it's not complicated at all.
10 But, you will find that his story is a house of cards.
11 It will not establish what he claims to you.

12 Now, he will establish -- I know when you got
13 your jury notice, I'm sure you -- a lot of you groaned
14 and said, I can't do this now. I'm not meant to
15 participate in it, I'll do it another time. You have
16 other important things to do, but you are here and I
17 believe you will not be sorry. You will find your
18 experience here at this trial both interesting and
19 educational. You will learn not only how criminal
20 trials proceed, but there are things you will hear in
21 this trial, in this courtroom, in the next few weeks
22 that will amaze you. You will not believe they will go
23 on in court at all. You would not believe that they
24 would go on in our justice system in this day and age
25 in Nassau County. I'm not going to prejudice you now

kmm

Defense's opening

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1 by telling you these things, but I will point them out
2 at the end of the case when I sum up.

3 Members of the jury, you know how serious
4 these charges are, and these next few days are the most
5 important days in the life of Daniel Ramos. It is,
6 therefore, very important that you pay attention not
7 only to the direct examination given to you by the
8 prosecutor, but to the cross-examination of the
9 witnesses that are presented as well. What I'm asking
10 you to do is a very difficult thing, being a juror in a
11 criminal case. I'm asking you to pay attention to not
12 only what is said, but how it is said.

13 You did hear the judge allude to this in her
14 opening statement before, because how a witness
15 testifies can be sometimes even more important than
16 what the witness says. I asked you before, if during
17 the jury selection process if anybody ever lied to you
18 before, and they didn't come up to you and say to you,
19 I'm going to tell you a lie now. You have a sense of
20 evaluating people as to just whether or not they have
21 been truthful with you, and I'm asking you to use that
22 as well, since that, you have.

23 The judge told you, and it is true, of
24 course, the reporter is taking everything that is said.
25 And the court reporter can read it back if you should

Defense's opening

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1 request. But the court reporter can't take down how
2 something is said and that's why it is important for
3 you to try to remember how a witness testifies, not
4 just what they say.

5 The prosecution would have you believe just
6 from the opening statement that Daniel Ramos is a
7 pedophile; that he sexually abused Mya Ramirez.

8 Daniel Ramirez, you will learn, is a
9 fifty-four year old U.S. citizen, never been arrested
10 before in his life, who came to this country in the
11 early 90's, who's married, devoted religious man, kind
12 man, raised two children.

13 MR. PERRI: Objection. May we approach?

14 THE COURT: Step up.

15 (Whereupon, there was a sidebar discussion as
16 follows:)

17 THE COURT: There's been an objection.
18 Normally, I would overrule any objection because this
19 is not evidence, but I just want to make sure I
20 understand the nature.

21 MR. PERRI: It mischaracterizes the People
22 are requesting to find him to be a pedophile and then
23 the litany of facts that are solely there to ask for
24 sympathy --

25 THE COURT: The objection is going to be

Defense's opening

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1 overruled. It is an opening statement. I'll remind
2 them at the close of your statement neither opening is
3 evidence and give them a break, and then we'll start
4 the trial thereafter.

5 MR. PERRI: Yes, your Honor.

6 (Whereupon, the proceedings resumed.)

7 MR. BERGER: As I was saying with a devote
8 religious man, married, raised two children, worked his
9 way up when he got here working in a plastics company
10 to become a commercial driver, were among his many
11 driving jobs, provided services to the disabled. He's
12 a man who worked very hard, providing for his family
13 and now finds himself facing an outrageous charge that
14 threatens his freedom and his reputation.

15 I ask you to carefully scrutinize all
16 witnesses that come before you at this trial. Keep an
17 open mind no matter what the piece of evidence you
18 hear. Wait until the evidence is concluded. Wait
19 until you hear the arguments of counsel. Wait until
20 the Judge gives you the charge, then try to start to
21 consider what it all means. You will see that this is
22 a very simple, uncomplicated case. That the
23 prosecution wants you to believe this is not as
24 Mr. Perri has portrayed it to you.

25 I'm confident if you analyze the evidence in

1 this case carefully, listen to the charges by the
2 judge, that the only correct verdict in this case will
3 be that of not guilty. Thank you.

4 THE COURT: Thank you, Mr. Berger.

5 All right, just a reminder to all of the
6 jurors. What you just heard from both attorneys is
7 their opening statements, and as I told you, what the
8 lawyers say and what I say is not evidence. We'll
9 start with the evidence portion of this case in a few
10 moments. It has been about an hour since you have been
11 here. I've given my word, I would allow you to stretch
12 your legs and take a break after an hour of activity
13 within the courtroom. I'll keep my promise to you.
14 I'll keep a short break this time. I have a few legal
15 issues to go over.

16 Keep an open mind throughout the trial. Do
17 not discuss the case amongst yourselves or with anyone
18 else during the trial. Do not permit anyone to discuss
19 the case in your presence. Do not talk to lawyers,
20 witnesses, about anything during the trial and don't
21 use the short opportunity to get on your phones and
22 start looking up news accounts. You are not allowed to
23 do that. Please do not. Enjoy your break. We'll see
24 you shortly.

25 (Whereupon, the jury exited the courtroom.)

1 THE COURT: There are other matters you need
2 to put on the record before we proceed and then I do
3 need to do a swearability too with the young child
4 request if you are going with her first.

5 MR. PERRI: It is the People's intension with
6 regard to scheduling, to have Crystal Ramirez, Sincere
7 Ramirez, the arresting officer, and then tomorrow
8 morning so you could schedule with the jury to have the
9 child first and then the swearability determination and
10 then testimony from the child.

11 THE COURT: That's perfect.

12 What do we need to put on the record now
13 before we can continue with the testimony?

14 MR. BERGER: A few things.

15 MR. PERRI: Can I put the disclosure on the
16 record. Your Honor, on Friday, the People did disclose
17 to defense counsel that in the process of preparing
18 Crystal Ramirez, in discussing whether or not she had
19 prior encounters with law enforcement, in doing our due
20 diligence and questioning whether she had been
21 convicted of a crime, she disclosed to us there was
22 something in her past when she was eighteen, and then
23 previously I had run her NYSID, and there was nothing
24 on her NYSID.

25 We were able then to determine by bringing

1 her to the district courthouse on Friday afternoon that
2 she did have a youthful offender on an attempted petit
3 larceny. We faxed the certificate of disposition over
4 to defense counsel. She was originally arrested in
5 that case for a robbery, aided by another. The factual
6 background that she disclosed to me with regard to
7 that, is that in 2002, she got into a physical
8 altercation with another girl, that she hit that girl
9 with an open hand. They hit each other and then her
10 friend who she was with grabbed her beach bag at Long
11 Beach train station and left with it. That she was
12 eventually given youthful offender status with
13 probation and time served, and that we disclosed the
14 certificate of disposition to defense counsel on
15 Friday. We would like to be heard later about whether
16 or not she could be cross-examined on that or the
17 underlying facts, et cetera.

18 Additionally, this morning, Crystal Ramirez,
19 not someone beyond high school education and behind the
20 understanding of the criminal justice system, is
21 limited. She believes we can find no corroboration of
22 it. When she was 14 or 15, she was arrested and
23 brought to Family Court and this is -- we're just
24 disclosing this now. I learned this morning for
25 stealing change out of a car in Long Beach and because

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1 her much older boyfriend had pills on him. She does
2 not know what she was charged with. She does not think
3 she was adjudicated a juvenile delinquent in Family
4 Court, and she has no further information about that
5 alleged testimony, 14 or 15. Your Honor, that was not
6 reflected in her NYSID in any way.

7 THE COURT: I'll hear from you, Mr. Berger.

8 MR. BERGER: Judge, while Mr. Perri considers
9 having done due diligence on Friday, after we picked a
10 jury, I'm saying I'm entitled to have the felony
11 complaint in the original case that was a robbery,
12 second degree aided by another. I think that since the
13 People have notified me of this in such a late date,
14 and the witnesses scheduled to testify today, they
15 should provide me with the felony complaint. And I
16 could rely on what Mr. Perri says to this Court, but I
17 think I should have the felony complaint because I
18 don't know I'm necessarily bound by what Mr. Perri has
19 represented here. All I'm saying is that I'm asking
20 the Court direct that I be provided with the felony
21 complaint so I could question Ms. Ramirez with respect
22 to that incident.

23 THE COURT: I imagine it's sealed if it even
24 exists.

25 MR. PERRI: Yes, your Honor. It would be

1 sealed. The People do not have physical custody. I do
2 not have physical custody of even the district
3 attorney's file. I have ordered it.

4 But with respect to the youthful offender
5 conviction, your Honor, the People under Second
6 Department case Lucius, 289, AD2d 963, would argue the
7 defense should be precluded from questioning about the
8 actual finding she was a youthful offender. There was
9 no criminal conviction for an '80 petit larceny. The
10 arrest itself is not proof of -- does not go to her
11 credibility.

12 And additionally, under Lucius and also under
13 Lemery, which is a Fourth Department case in 2013, 107
14 AD3d, 1593, it was noted that although in accordance
15 with the holding in Lucius, the underlying facts of
16 youthful offender are at the discretion of the Court.
17 It does need to make a determination as to whether or
18 not a conviction or adjudication from such a long time
19 period before is more probative than it is prejudicial
20 with respect to the credibility of a witness.

21 Specifically, in Lemery it is noted that the
22 juvenile delinquent can be wholly excluded from
23 cross-examination of the prosecution witness, and that
24 the underlying immoral acts that constituted the
25 youthful offender at the discretion of Court, and we

1 would ask the Court preclude defense counsel from -- on
2 the youthful offender as well as the possible juvenile
3 delinquent that she has disclosed.

4 MR. BERGER: The prosecutor has acknowledged
5 noticed that Ms. Ramirez has said that she was arrested
6 for stealing change from a car in Long Beach. Those
7 facts I certainly can ask her about and I'm not
8 claiming I could ask her about a youthful offender
9 adjudication. I'm asking about the underlying acts.
10 That's why I wanted the felony complaint in order to do
11 that. And it seems to me to tell me on Friday
12 afternoon for a witness that is coming in on Monday
13 morning or some time on Monday to testify, I should --
14 the district attorney can't claim that they --
15 Mr. Perri cannot claim he does not have the felony
16 complaint. He has constructive possession of a felony
17 complaint. It's a district attorney's document. No
18 matter what the findings were, no matter what the
19 judicial determination was, they have this document
20 which shows the underlying acts. I should be provided
21 that, so I could ask her about the underlying acts.

22 THE COURT: All right. With regards to the
23 action or the acts of Ms. Ramirez, that she believes
24 brought her to Family Court at a point in time when she
25 was 14 years old, that is completely excluded. Defense

1 will not be allowed to ask any questions regarding that
2 matter, unless, of course, the door is somehow opened
3 and she brings it up, then it is fair game for you,
4 Mr. Berger.

5 With regards to the action when Ms. Ramirez
6 was 18, and received a youthful offender adjudication,
7 obviously, Mr. Berger, you cannot inquire into the
8 youthful offender matter.

9 The Court will allow you to go into the
10 underlying facts from that incident. I don't know of a
11 requirement that the People need to then go and unseal
12 every file that is a part of adjudication that is
13 noncriminal in nature, unless you can present me with
14 something that says it is required. I'm not going to
15 force the People to get an unsealing order to attempt
16 to locate this complaint. But, Mr. Berger, you can, of
17 course, inquire about whatever facts are initially
18 brought to your attention, obviously, by Ms. Ramirez,
19 Ms. Ramirez's testimony, and I will give you leeway to
20 make inquiry with regards to those facts in light of
21 the fact I appreciate you don't have something to
22 compare it to. I understand that position. So, you
23 can do cross-examination of that. I won't require the
24 People to turn it over. If you have it, however, turn
25 it over.

1 MR. PERRI: At this time I do not have
2 physical possession of that file.

3 THE COURT: Do you know if it's sealed?

4 MR. PERRI: It could have been sealed as a
5 matter of law since the inception when she was
6 adjudicated a youthful offender.

7 MR. BERGER: Sometimes pleas require a
8 waiving of sealing rights. I don't know whether that
9 was sealed or not.

10 MR. PERRI: As it appears nowhere on her
11 NYSID, there is no evidence that was part of
12 adjudication, and it does not state there -- as there
13 was a waiver of sealing rights on the certificate of
14 disposition.

15 MR. BERGER: For the record, could I have
16 Mr. Perri recite what he understands the facts of that
17 case to be?

18 THE COURT: Absolutely.

19 MR. PERRI: Yes, your Honor. It's my
20 understanding that in the summer of 2002 --

21 MR. BERGER: Do we have date?

22 MR. PERRI: There was a date on the
23 certificate of disposition.

24 MR. BERGER: The date of occurrence.

25 MR. PERRI: Other than the date of arrest, I

1 do not have a specific date of occurrence.

2 THE COURT: Other than the summer of 2002.

3 MR. PERRI: The summer of 2002. Your Honor,
4 that Crystal Ramirez was with another female friend.
5 She got into a physical altercation at the Long Beach
6 train station with a girl she had ongoing problems
7 with, who was similar in age to her. She struck that
8 woman, that girl, with an open hand. The beach bag
9 possessed by that women was on the ground during the
10 physical fight and the friend of Crystal Ramirez
11 grabbed that bag and they both fled after the fight.

12 MR. BERGER: I'm sorry, Crystal Ramirez.

13 MR. PERRI: A friend or associate of Crystal
14 Ramirez, grabbed the bag, she grabbed the actual
15 property, the beach bag, and left the scene, your
16 Honor.

17 MR. BERGER: They both left the scene?

18 MR. PERRI: Yes.

19 THE COURT: Do you have that for your notes?

20 MR. BERGER: I do.

21 THE COURT: Is there anything else before the
22 Court takes a two-minute break and then we get started
23 with testimony?

24 MR. PERRI: No, your Honor. I ask to speak
25 to the witness about your rulings.

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1 THE COURT: Absolutely.

2 Mr. Berger, anything else?

3 MR. BERGER: No.

4 THE COURT: There is a court interpreter that
5 continues to be part of this case. Put your name on
6 the record.

7 THE INTERPRETER: Carmen Knight, New York
8 State interpreter.

9 THE COURT: Five-minute break for the Court
10 and parties.

11 (Whereupon, a short recess was taken.)

12 THE CLERK: Case on trial continued,
13 Indictment 742N of 2014. People of the State of New
14 York vs. Daniel Ramos.

15 Let the record reflect all parties are
16 present. The jury is not present at this time.

17 People ready?

18 MR. PERRI: Yes, your Honor.

19 THE CLERK: Defense counsel ready?

20 MR. BERGER: Yes, your Honor.

21 THE COURT: Before I bring in the jury,
22 anything for the record, Mr. Berger?

23 MR. BERGER: No, ma'am.

24 THE COURT: People, anything for the record?

25 MR. PERRI: One matter. The People are not

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1 allowing any of their witnesses to be present for the
2 testimony of any of their witnesses throughout this
3 trial. We want to inquire whether that is a policy of
4 the Court upon information and belief. It's possible
5 some of the parties were names cited by defense
6 counsel, and if they are to be called as witnesses, we
7 ask them to be excluded from the proceeding.

8 THE COURT: It's my practice to exclude both
9 prosecution and defense witnesses from this courtroom
10 should they potentially be called as witnesses. Do you
11 have anybody here or potential witnesses?

12 MR. BERGER: They are -- they are family
13 members. I ask in this particular case you make an
14 exception. They're not going to be talking about
15 anything that is adduced by the prosecution in its case
16 at this trial. I ask you to allow the family members
17 to remain.

18 THE COURT: They're more character than
19 factual?

20 MR. BERGER: They will not be factual, yes.

21 THE COURT: If you allow them to remain, just
22 so you are on notice, the People are going to be given
23 to cross-examine them with regards to the fact they
24 were sitting in the courtroom the entire time hearing
25 all of the testimony, if that's the appropriate

1 question for cross-examination.

2 MR. BERGER: If it is and you rule that way,
3 we'll abide by that.

4 THE COURT: In light of the fact they are
5 family members, can you tell me who?

6 MR. BERGER: Son and daughter-in-law.

7 THE COURT: Are those the individuals in this
8 courtroom that are your potential witnesses?

9 MR. BERGER: Yes.

10 THE COURT: I will not allow anyone else
11 other than a blood family member. At this time, the
12 son, only the son and daughter-in-law may remain in the
13 courtroom.

14 People, you may be able to cross-examine
15 accordingly.

16 MR. PERRI: People reserve their right to ask
17 for defense counsel show cause as to the witnesses, as
18 they would be appropriate for this case.

19 THE COURT: We'll cross that bridge when we
20 get there. NOTE!!! NOTE!!!.

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: Do both side stipulate all sworn
23 jurors are properly seated?

24 MR. PERRI: Yes, your Honor.

25 MR. BERGER: Yes, your Honor.

C. Ramirez - People - Direct

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1 THE COURT: We'll get started right away.

2 Call your first witness.

3 MR. PERRI: The People call Crystal Ramirez.

4 C R Y S T A L R A M I R E Z, called on behalf of the

5 People, having been duly sworn, took the witness stand

6 and testified as follows:

7 THE CLERK: State your full name, spell your

8 first and last name, and give your county of residence.

9 THE WITNESS: Crystal Ramirez, C-R-Y-S-T-A-L,
10 R-A-M-I-R-E-Z. Nassau County.

11 THE COURT: Good morning, Ms. Ramirez.

12 My name is Teresa Corrigan. I'm the judge in
13 this matter. Keep your voice up, speak slowly,
14 clearly, loudly so everyone in the courtroom can hear
15 you. Wait for an entire question to be asked before
16 you start your answer because the court reporter can
17 only take down one person speaking at a time, and if
18 you hear the word objection, I need you to stop
19 speaking. Give me a chance to make a ruling, and I'll
20 let you know whether or not you should answer the
21 question.

22 Do you understand?

23 THE WITNESS: Yes.

24 THE COURT: You may inquire.

25 DIRECT EXAMINATION

C. Ramirez - People - Direct

610

1 BY MR. PERRI:

2 Q. Good morning, Crystal.

3 A. Good morning.

4 Q. On October 16, 2013, where were you living?

5 A. 124 Park Avenue in Roosevelt.

6 Q. Where do you live currently?

7 A. 124 Park Avenue in Roosevelt.

8 Q. Is that a single-family home or apartment?

9 A. It's an apartment.

10 Q. How many bedrooms does your apartment have?

11 A. One.

12 Q. What floor is it on?

13 A. The first.

14 Q. What else is located on the first floor of that
15 building?

16 A. Apartments and a deli.

17 Q. Could you describe the layout of your apartment?

18 A. It's an enclosed porch. When you walk in there's
19 the enclosed porch. The porch -- there's the living room
20 also. I made it into my bedroom also, and after that room
21 is the kitchen, and after the kitchen is my kids' room, and
22 after my kids' room is the bathroom.

23 Q. Now, who do you live with?

24 A. My two children.

25 Q. What are your two children's names?

C. Ramirez - People - Direct

611

- 1 A. Sincere Feliciano Ramirez, Mya Feliciano Ramirez.
- 2 Q. Starting with Mya, how old is Mya?
- 3 A. Seven.
- 4 Q. What is Mya's age?
- 5 A. 6/1/07.
- 6 Q. Who is Mya's father?
- 7 A. Christian Feliciano Ramirez.
- 8 Q. How old was Mya on October 16, 2013?
- 9 A. Six.
- 10 Q. Does she currently go to school?
- 11 A. Yes.
- 12 Q. Where does she currently go to school?
- 13 A. Central Avenue Elementary.
- 14 Q. Was she going to school in October of 2013?
- 15 A. Yes.
- 16 Q. What grade was she in in October of 2013?
- 17 A. First.
- 18 Q. You said you also have a son, Sincere. How old is
- 19 he?
- 20 A. Eleven.
- 21 Q. Who is Sincere's father?
- 22 A. Christian Feliciano.
- 23 Q. What's Sincere's date of birth?
- 24 A. 9/22/03.
- 25 Q. How old is Sincere today?

C. Ramirez - People - Direct

612

1 A. Eleven.

2 Q. Does he go to school?

3 A. Yes.

4 Q. Where does he go to school?

5 A. Washington Rose Elementary.

6 Q. Were both of your children living with you at 124
7 Park Avenue on October 16, 2013?

8 A. Yes.

9 Q. I would like to draw your attention before either
10 children were born in the summer of 2002, did you get into a
11 fight that summer with another girl?

12 A. Yes.

13 Q. Who was she?

14 A. A female that my sister knew, my younger sister
15 knew.

16 Q. What was her name?

17 A. Sarah.

18 Q. Did you hit her?

19 A. Yeah, I open handed smacked her.

20 Q. Were you with anyone else?

21 A. Yes.

22 Q. Who were you with?

23 A. She was my best friend at the time.

24 Q. What, if anything, did she do during that
25 incident?

C. Ramirez - People - Direct

613

1 A. She took Sara's beach bag that was on the ground.

2 Q. How old were you back then?

3 A. 18.

4 Q. Drawing your attention back to the present, do you
5 know an individual named Daniel Ramos?

6 A. Yes.

7 Q. How do you know him?

8 A. He's my children's -- my children's father
9 friend's father.

10 Q. How long have you known him?

11 A. About 13 years, 14 years.

12 Q. Do you see him presently in the courtroom?

13 A. Yes.

14 Q. Can you identify him by pointing to him and naming
15 an article of clothing he is wearing?

16 A. Wearing a white sweater.

17 MR. PERRI: I ask that the record reflect
18 that she identified the defendant.

19 THE COURT: So indicate.

20 Q. Were you friends with the defendant before October
21 16, 2013?

22 A. Yes.

23 Q. How long were you friendly with him?

24 A. From like the winter right before.

25 Q. I'm sorry. And did you have any major problems or

1 disagreements with him before October 16, 2013?

2 A. No.

3 Q. Did you ever date Daniel Ramos, the defendant?

4 A. No.

5 Q. Were you ever romantically involved with the
6 defendant?

7 A. No.

8 Q. Prior to October 16, 2013, to your knowledge, was
9 the defendant employed?

10 A. Yes.

11 Q. What was he working as?

12 A. A bus driver.

13 Q. Who was he a bus driver for?

14 A. It's called the NICE bus now, but MTA before.

15 Q. Ms. Ramirez, do you speak Spanish?

16 A. No.

17 Q. When you communicated with the defendant during
18 the years you've known him, what language did you use?

19 A. English.

20 Q. Have you been able to have a conversation with the
21 defendant in English?

22 A. Yes.

23 Q. Do your children speak Spanish?

24 A. No.

25 Q. Have you observed the defendant speak with the

1 children?

2 A. Yes.

3 Q. What language did they use?

4 A. English.

5 Q. Has the defendant ever babysat or watched your
6 children?

7 A. Yes.

8 Q. Approximately, how many times before October 16,
9 2013, did the defendant do that?

10 A. About four or five.

11 Q. Drawing your attention to October 16, 2013, were
12 you at home around midday that day?

13 A. Yes.

14 Q. Could you describe your emotional state on that
15 day?

16 A. I was very upset.

17 Q. Why were you upset?

18 A. Because someone called my brother who I considered
19 family, who I grew up with and lived at my home many years
20 on and off, passed away.

21 Q. What was his name?

22 A. Dave Jackson.

23 Q. When was the last time before October 16, 2013,
24 when you got that news that you had seen him?

25 A. Two days prior.

C. Ramirez - People - Direct

616

1 Q. Did there come a time that day when you saw the
2 defendant after you learned that your friend you grew up
3 with died?

4 A. Yes.

5 Q. Where did you see him?

6 A. He was driving a bus down my block.

7 Q. What kind of bus was that?

8 A. The NICE, like a handicap bus, a NICE bus.

9 Q. Approximately what time did you see the defendant?

10 A. I don't know.

11 Q. What was -- without going into the substance of
12 any conversation you may have had, did you speak with him at
13 that time?

14 A. Yes.

15 Q. Did there come a time later that day when the --
16 when the defendant came back to your apartment?

17 A. Yes.

18 Q. Were your children home when the defendant arrived
19 at your house?

20 A. No.

21 Q. Where were they?

22 A. School.

23 Q. Now, during that day, during that afternoon, was
24 anyone drinking?

25 A. Yes.

C. Ramirez - People - Direct

617

1 Q. Were you drinking?

2 A. Yes.

3 Q. Was the defendant drinking?

4 A. Yes.

5 Q. Who brought the alcohol?

6 A. Danny.

7 Q. When you say, Danny, do you mean the defendant?

8 A. Yes.

9 Q. What alcohol did the defendant bring?

10 A. Long Island Ice Tea.

11 Q. Approximately how many drinks did you have that
12 afternoon?

13 A. About three.

14 Q. What was your first drink?

15 A. Like around 11:30.

16 Q. Did you finish that last drink?

17 A. No, I did not.

18 Q. Why didn't you finish that last drink?

19 A. Because --

20 MR. BERGER: Objection.

21 Q. Why didn't you?

22 A. Because I found I had to call the police. I found
23 him in the kitchen with my daughter.

24 Q. When you say him in that sentence, were you
25 indicating the defendant?

kmm

C. Ramirez - People - Direct

618

1 A. Yes.

2 Q. Going back a little from there, did there come a
3 time your children came home that day?

4 A. Yes.

5 Q. Approximately what time did they come home?

6 A. That day my daughter usually would come home
7 between like 2:20 and 2:25, but for some reason that day my
8 son came home first and my daughter came home at 2:45.

9 Q. Where were you when they came home?

10 A. On the porch.

11 Q. Who was at your apartment when your children came
12 home?

13 A. Danny.

14 Q. What were your children wearing when they came
15 home?

16 A. Uniforms for school.

17 Q. Where did the children go?

18 A. To their room.

19 Q. Where were you when they went inside their room?

20 A. On the porch.

21 Q. Did there come a time that afternoon, after your
22 children came home from school, that anyone else came to
23 your apartment other than the defendant?

24 A. Yes.

25 Q. Who was that?

C. Ramirez - People - Direct

619

1 A. An acquaintance I know from around the
2 neighborhood named Prince.

3 Q. What, if anything, did you do with Prince?

4 A. I spoke to him, smoked a cigarette outside with
5 him.

6 Q. When you say, outside, outside on the porch?

7 A. Yes.

8 Q. Did there come a time while Prince was outside on
9 the porch with you that the defendant no longer was on the
10 porch?

11 A. Yes.

12 Q. Where, to your knowledge, did the defendant go?

13 A. I'm sorry?

14 Q. What did you say -- where did the defendant go?

15 A. Into the apartment.

16 Q. Did he explain where he was going or why he was
17 going inside?

18 A. No.

19 Q. How long was the defendant gone?

20 A. About ten minutes.

21 Q. And what, if anything, happened while the
22 defendant was gone while you were outside in the front?

23 A. What do you mean, what happened?

24 Q. Did an individual that you named as Prince, did he
25 stay on the porch in front of the apartment?

kmm

C. Ramirez - People - Direct

620

1 A. He smoked a cigarette and left.

2 Q. After Prince left, what did you do?

3 A. Went inside.

4 Q. When you went inside the apartment, what room did
5 you enter?

6 A. The porch.

7 Q. Was the defendant on the porch?

8 A. No.

9 Q. After going to the porch, what did you do next?

10 A. Walked into the living room, which is also my
11 bedroom.

12 Q. When you entered the living room that you also
13 used as a bedroom, was anyone in there?

14 A. Yes.

15 Q. Who was in there?

16 A. My son.

17 Q. Was that Sincere?

18 A. Yes.

19 Q. What, if anything, was Sincere doing?

20 A. He was playing PS III, sitting on my bed.

21 Q. And then where did you go next?

22 A. Into the kitchen.

23 Q. When you entered the kitchen -- do you have a
24 kitchen door?

25 A. Yes.

C. Ramirez - People - Direct

621

1 Q. Was the kitchen door open or closed?

2 A. Closed.

3 Q. When you opened the kitchen door, what, if
4 anything, did you see?

5 A. I saw Mya with her pants and panties around one
6 ankle, and I saw Danny standing behind her.

7 Q. When you say, around one ankle, up or down?

8 A. Down.

9 Q. Where was the defendant, could you please describe
10 where was the defendant in relation to Mya?

11 A. Directly behind her.

12 Q. What, if anything, was he doing?

13 A. When I walked in?

14 Q. When you walked in.

15 A. He had his hand on his -- as if like he had a cup
16 like this, it was on top of the frig, holding the cup, and
17 his elbow resting on the freezer and going like this.

18 Q. Could you describe the defendant's demeanor, how
19 he appeared to you when you walked into the kitchen?

20 A. Like caught, ashamed, embarrassed.

21 Q. When you walked into the kitchen, you found the
22 defendant directly in front of Mya in the kitchen. What, if
23 anything, did you say when you walked in?

24 A. He wasn't in front of Mya.

25 Q. I'm sorry, directly behind Mya; what did you say?

C. Ramirez - People - Direct

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1 A. What the F is going on.

2 Q. When you said that, what, if anything, did Mya say
3 in response?

4 A. She went like this and said he licked my coochie.

5 Q. To whom was she pointing?

6 A. Danny.

7 Q. When she made this statement to you, were her
8 pants, her underwear up or down?

9 A. Down.

10 Q. What, if anything, did you do next after she made
11 that statement?

12 A. I picked her up and put her on the bed and started
13 putting her clothes on her.

14 Q. Put on her the bed. Did you leave the room?

15 A. Leave what room?

16 Q. The kitchen.

17 A. Yes.

18 Q. What, if anything, were you saying as you grabbed
19 your daughter and went into the living room?

20 A. I said, get the F out.

21 Q. Did the defendant remain in the kitchen?

22 A. No, he started walking towards the door.

23 Q. What, if anything, did the defendant say?

24 A. He said, don't believe her. She is lying.

25 Q. Once the defendant was outside, what, if anything,

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1 did you do?

2 A. Locked the door.

3 Q. After locking the door, what did you do next?

4 A. I called the police.

5 Q. How did you call the police?

6 A. I dialed 911.

7 Q. And after dialing 911, did there come a time that
8 Nassau County Police Department arrived at your residence?

9 A. Yes.

10 Q. Did more than one officer respond?

11 A. Yes.

12 Q. Do you remember specifically what officer you met
13 with that day?

14 A. No.

15 Q. Do you know specifically what order the officers
16 that arrived at your apartment, they came in?

17 A. No.

18 Q. Did you speak with the police when they came to
19 your apartment?

20 A. Yes.

21 Q. And without going into the substance of any of the
22 conversation, did Mya speak with the police when they came?

23 A. Yes.

24 Q. Did you see the defendant outside of your
25 apartment?

kmm

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1 A. Yes.

2 Q. Where was he?

3 A. With the police officers.

4 Q. Did you observe the defendant actually being
5 arrested?

6 A. No.

7 Q. Did you observe the defendant being placed in a
8 police car?

9 A. No.

10 Q. Did there come a time that day when you, Sincere,
11 and Mya left your residence?

12 A. Yes.

13 Q. How did you leave?

14 A. In an ambulance.

15 Q. Where did that ambulance go?

16 A. To the Nassau County University Medical Center.

17 Q. Once at the Nassau County University Medical
18 Center was Mya seen by employees at the hospital?

19 A. Yes.

20 Q. Was she seen by a nurse examiner?

21 A. Yes.

22 Q. Were you present during that examination?

23 A. Yes.

24 Q. Could you describe what part of the examination
25 you saw? What was the nurse doing?

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1 A. They had her take her pants and panties off. She
2 was laying on a table or bed, whatever you like to call it
3 and had her spread her legs and she had swabs.

4 Q. What, if anything, was taken from Mya at the
5 hospital?

6 A. Her pajama pants and panties.

7 Q. Did you ever get that clothing back?

8 A. No.

9 MR. PERRI: I ask these two items be marked
10 for identification as People's 1 and 2.

11 THE COURT: They can be marked.

12 (People's Exhibits 1 and 2 were marked for
13 identification.)

14 MR. PERRI: I ask the witness be shown what
15 was marked as People's Exhibit 1.

16 (Whereupon, People's Exhibit 1 was handed to
17 the witness.)

18 Q. Since you have the gloves on, I ask you to take
19 out the contents of People's 1 and take a look at it. Do
20 you recognize what is inside the bag marked People's 1?

21 A. Yes.

22 Q. What do you recognize that to be?

23 A. My daughter's pajama pants.

24 Q. Were those the pajama pants Mya was wearing on
25 October 16, 2013?

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1 A. Yes.

2 Q. Were those the pajama pants the nurse at the
3 hospital took from your daughter?

4 A. Yes.

5 Q. Are they in the same or substantially the
6 condition when they were taken from your daughter?

7 A. Yes.

8 MR. BERGER: No objection.

9 THE COURT: Let's mark it into evidence,
10 People's 1.

11 (People's Exhibit 1, previously marked for
12 identification, was marked and received in evidence.)

13 MR. PERRI: I ask the witness be shown
14 People's 2 for identification.

15 (Whereupon, People's Exhibit 2 was handed to
16 the witness.)

17 Q. I ask you to look inside and take out the contents
18 of the envelope marked People's 2; do you recognize that
19 object?

20 A. Yes.

21 Q. What do you recognize it to be?

22 A. My daughter's underwear.

23 Q. Is it in the same condition as -- I'm sorry, is
24 that the same underwear from October 16, 2013?

25 A. Yes.

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1 Q. And was that the same underwear taken from her by
2 the nurse examiner?

3 A. Yes.

4 Q. Crystal, can I ask you, is it the same condition,
5 look the same as when your daughter was wearing it on
6 October 16, 2013?

7 A. No.

8 Q. How is it different?

9 A. There's some type of writing on it and the coochie
10 is cut out.

11 Q. Is that an area of the underwear?

12 A. Yes.

13 Q. Are you saying that has been cut out?

14 A. Yes.

15 MR. PERRI: I ask People's 2 be marked into
16 evidence.

17 THE COURT: Any objection?

18 MR. BERGER: Marked it into evidence as
19 People's 2.

20 (People's Exhibit 2, previously marked for
21 identification, was marked and received in evidence.)

22 Q. Ms. Ramirez, while at the hospital, did there
23 come a time when you met an individual named Detective
24 Baran?

25 A. Yes.

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1 Q. Did you speak with Detective Baran?

2 A. Yes.

3 Q. When you spoke with Detective Baran, was Mya
4 present.

5 A. No.

6 Q. Did you observe Detective Baran speaking with Mya
7 at the hospital?

8 A. No.

9 Q. What happened after you spoke with Detective Baran
10 and after you and Mya were with the nurse examiner?

11 A. We went home.

12 Q. After October 16, 2013, did you notice -- what, if
13 anything, did you notice about Mya's behavior and how it was
14 different after this incident?

15 A. She was very -- can I give like an example?

16 Q. Sure, yes.

17 A. She was acting different. There's only one
18 bathroom in my apartment. She would take a shower, or she
19 was going to change from her school uniform to other
20 clothing. When she came home from school she would, for
21 instance, if she was changing her clothes and I had to go to
22 the bathroom, she would go like this and cover herself
23 instead of finishing getting dressed.

24 Q. To be clear, for the record, were you indicating
25 she was covering her private areas?

kmm

1 A. Yes.

2 Q. Was she behaving this way before October 16, 2013?

3 A. No.

4 MR. PERRI: Nothing further, your Honor.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. BERGER:

8 Q. Ms. Ramirez, you indicated that you knew the
9 defendant for about 13, 14 years?

10 A. Yes.

11 Q. And you had been to his house before?

12 A. Yes.

13 Q. And you have been to his house with your kids
14 before?

15 A. Yes.

16 Q. Daniel Ramos, those are your children from the
17 time they were born?

18 A. I don't think he met them when they were born, but
19 he knew them since they were little, yes.

20 Q. Are you married?

21 A. No.

22 Q. Were you ever married?

23 A. No.

24 Q. So, the father you said was Christian, you never
25 married him?

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1 A. No.

2 Q. That's correct, you didn't -- you have not married
3 him?

4 A. I have not married him.

5 Q. In October of 2013, was Christian living at that
6 residence with you?

7 A. No.

8 Q. And you described Daniel Ramirez as a family
9 friend; is that correct?

10 A. Daniel Ramirez.

11 Q. I'm sorry, Daniel Ramos?

12 A. A family friend.

13 Q. Yes.

14 A. Yes.

15 Q. During the time that you knew Daniel, did he drive
16 you various places?

17 A. Yes.

18 Q. You did not own a car, I take it?

19 A. No.

20 Q. No, that's correct?

21 A. No, that's correct, I did not own a vehicle.

22 Q. It was Daniel who you asked to drive you various
23 places, correct?

24 A. Correct.

25 Q. Did he take you to places like the supermarket?

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1 A. Yes.

2 Q. Did he take you to the beach with the kids?

3 A. Yes, and other friends also.

4 Q. I'm sorry?

5 A. And other friends.

6 Q. What do you mean, other friends?

7 A. My other friends, Nancy. I have other friends
8 that went with us.

9 Q. He would take you, your friends, and the kids to
10 various places?

11 A. Yeah, or he would drop us off.

12 Q. Or drop you off?

13 A. Correct.

14 Q. You have been to the beach with Daniel and the
15 kids?

16 A. Correct.

17 Q. And to a pool?

18 A. No.

19 Q. Lindenhurst pool?

20 A. I never went to a pool with Danny.

21 Q. You never went to the Lindenhurst pool?

22 A. No.

23 Q. You have never been there?

24 A. I've never been to a pool in Lindenhurst.

25 Q. Did he take you to your cousin's home?

1 A. Yes, he did.

2 Q. In Long Beach, that is?

3 A. Yes.

4 Q. Has he taken you to the laundromat?

5 A. No.

6 Q. He helped you run errands by driving you various
7 places?

8 A. Yes.

9 Q. Did he take you to doctors' appointments?

10 A. No.

11 Q. Did you ever ask Daniel to pick up the kids at
12 your cousin's home in Long Beach and take them to where they
13 wanted to go?

14 A. No, I asked them to pick up my children from Long
15 Beach and to bring them to me because I was at my friend's
16 house in Lindenhurst.

17 Q. And he did that?

18 A. He did that one time.

19 Q. Did he ever take them out for food for dinner?

20 A. He took them to Taco Bell.

21 Q. And other fast food places as well?

22 A. When I was there, but only one time did he pick
23 the children up by himself and take them to Taco Bell.

24 Q. By himself?

25 A. Correct.

1 Q. Now, was it your testimony that you became more
2 involved with Daniel from the winter of 2012, 2013; is that
3 what you said?

4 A. That's when he originally started helping me with
5 rides.

6 Q. He was helping you for approximately nine months
7 or so?

8 A. Yes, on and off. Yeah.

9 Q. Now, did there come a time when Daniel would bring
10 you to Lindenhurst and you would stay there and he had --
11 you had the kids with you and staying in Lindenhurst until
12 midnight and then he drove you home?

13 A. Yes.

14 Q. And when in Lindenhurst, you were at a friends, I
15 would assume?

16 A. Yes.

17 Q. Did he also take you to his bus races?

18 A. He brought me and my children, yes.

19 Q. And there was a BBQ, and he brought your children
20 there?

21 A. At the race?

22 Q. At the bus races?

23 A. Yes.

24 Q. Did he also drive you to 91 Lombardo Avenue in
25 Freeport?

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1 A. Yes.

2 Q. That's the South Shore Guidance Center, correct?

3 A. Correct.

4 Q. And he took your kids there to get therapy,
5 correct?

6 MR. PERRI: Objection.

7 THE COURT: Sustained.

8 Q. Weren't your kids going to the South Shore Child
9 Guidance Center for therapy?

10 MR. PERRI: Objection.

11 THE COURT: Sustained.

12 MR. BERGER: Can we come up?

13 THE COURT: Step up. The witness will step
14 down.

15 (Whereupon, there was a sidebar discussion as
16 follows:)

17 MR. PERRI: Relevance, and the question of
18 the privilege of whether they go to a doctor's
19 appointment or not.

20 MR. BERGER: I didn't hear.

21 THE COURT: Relevance, is the first argument,
22 and the reason I actually sustained the initial
23 objection and then, quite frankly, that children are in
24 therapy, has no bearing on this unless you tell me
25 otherwise.

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1 MR. BERGER: It does. In the first place,
2 Mr. Perri -- maybe we should excuse the jury, this
3 could be lengthy.

4 THE COURT: Okay.

5 Ladies and gentlemen, this is one of those
6 times when some legal matters we have to attend to,
7 rather than keeping you seated there, while we discuss
8 it at the bench, given the hour, I will give you an
9 early break for lunch. I'll ask you to please be back
10 in the jury room at 2:00 so we can start as close after
11 two as possible when you are all back here. The
12 realistic time is around ten after two, 2:15. I need
13 you back before we can even get ready to start.

14 Remember, parking is not easy. So those of
15 you who get back closer to two, will be all of those
16 who straggle back in, so keep that in your mind. Keep
17 an open mind throughout this trial. Do not discuss the
18 case amongst yourselves or with anyone else during the
19 trial.

20 Do not permit anyone to discuss the case in
21 your presence. Do not talk to lawyers, witnesses about
22 anything during the trial, and do not use the lunch
23 hour to go and view the place where the charged crime
24 was allegedly committed, or any other place involved in
25 the case.

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1 If there is any news coverage about the case,
2 discussions of the case reported by the news media, and
3 do not attempt to research any fact, issue or law
4 related to this case whether by discussion with others
5 by research in the library and/or by any other means or
6 source.

7 Have a great lunch and we'll see you at 2:00.

8 (Whereupon, the jury exited the courtroom.)

9 THE COURT: Yes, Mr. Berger.

10 MR. BERGER: The prosecution opened the door
11 when he asked the witness if her behavior had changed
12 since this incident to establish that there was a
13 trauma that occurred here, and by opening the door we
14 believe we have the right to establish that, in fact,
15 the children were going to therapy before this
16 incident. The defendant took her kids to that child
17 guidance -- to that South Shore Child Guidance Center a
18 number of times. Mr. Ramirez admitted that, and we
19 know, based upon information provided to me, that they
20 were going there for therapy.

21 Once he opened the door to make it seem as if
22 there's trauma that has occurred to Mya, at this point,
23 we should be able to pursue it. I have prepared, in
24 fact, a subpoena for these records which I urge the
25 Court to so order so we can have these documents as

1 soon as possible.

2 THE COURT: People.

3 MR. PERRI: The People would oppose that
4 application, simply stating that the child started to
5 act in a manner to cover up her private areas after
6 this incident, which directly alleges contact between a
7 defendant and the vaginal area does not open the door
8 to any and all therapy this family may or may not have
9 received throughout the course of their lives. That
10 there is no connection specifically alleged by defense
11 counsel, and there's -- it's the People's position it
12 is a fishing expedition to get more information and
13 violate their privacy rights.

14 MR. BERGER: I'll make an offer to the Court
15 it's not a fishing expedition. I have information that
16 has been provided to me, that, in fact, Ms. Ramirez
17 watched pornography in front of her children and the
18 fact that Mya had at least by six, maybe earlier,
19 watched pornography in her home, has created a
20 situation in which this child cannot distinguish
21 between reality and what she saw in the pornographic
22 films. This is why they were going to see therapy, and
23 Ms. Ramirez has, in fact, made that statement.

24 Judge, if this is a fiction charge here, the
25 fiction created by the girl, and that is our position

1 here at this trial, and based upon the fact that they
2 were going for counseling, I suggest compels the Court
3 to issue the subpoena and take a look at these records
4 and make a determination as to whether or not it is
5 relevant to the defense in this particular case.

6 THE COURT: All right. The application is
7 denied. There is nothing with regards to what I heard
8 in these applications that makes therapy prior to this
9 incident relevant at this time. I will not allow these
10 questions. The objection will be sustained when the
11 jury comes back and we'll continue at 2:00 sharp.

12 MR. BERGER: I want to know what you are
13 saying is that a six-year old seeing pornography is not
14 a relevant consideration as to whether or not she has
15 dealings with what is fictional and what is real.
16 And now, the People have introduced evidence that she
17 has changed, as if she were traumatized, is not
18 something we could rebut by introducing these records,
19 at least for the Court to examine them, at least to see
20 why they were there, to see whether or not it would
21 affect -- I can't imagine it not affecting a six-year
22 old girl or maybe younger.

23 THE COURT: People, how do you feel about the
24 Court looking at records in camera with there being no
25 additional questioning of this witness at this time

1 with regards to why her children went to therapy?

2 MR. PERRI: Your Honor, the People would
3 still oppose defense counsel's application as the mere
4 allegation that the mother of the child, with no
5 citation or the basis of this information and belief,
6 except possibly the defendant stating just that the
7 mother watched pornography opens the door to all the
8 therapy records. The People don't believe there is or
9 that -- what basis defense counsel's says that is the
10 reason they were going to therapy for years before this
11 incident. The People still would oppose, but in the
12 alternative, an in camera review.

13 MR. BERGER: Judge, as an officer of the
14 court, I'm making a representation to this Court that
15 the reason the children were going to therapy was
16 because they were watching pornography.

17 THE COURT: Says your client.

18 MR. BERGER: That's giving the source of it,
19 but I am basing it on -- no, says Crystal Ramirez,
20 actually.

21 THE COURT: Application is denied. However,
22 I will sign the subpoena or an in camera inspection of
23 these records assuming they come in a timely fashion.
24 I'm not delaying this trial for this. I find it to be
25 quite the fishing expedition. I don't think it's

1 relevant. The People did not open the door to what
2 comes before by stating that after this incident there
3 was one change in behavior, and it was extremely
4 limited testimony, but I will look at those records in
5 camera, and I'll sign that subpoena when you present it
6 to me for an in camera inspection, and we'll see if it
7 goes anywhere. If it does, you will be allowed to have
8 the witness recalled to the stand and the testimony can
9 continue, but it will not continue this afternoon with
10 your line of questioning regarding therapy.

11 MR. BERGER: If the child --

12 THE COURT: Mr. Berger, that is my ruling.
13 I'll sign a subpoena. I will look at the records in
14 camera. If they are relevant to what you are saying,
15 the witness will be recalled and you will be able to do
16 what you need to do with those records. If they are
17 not relevant, then the matter is done. You will not be
18 allowed to ask her questions any further this afternoon
19 about the reasons for those children being in therapy
20 prior to this incident.

21 MR. BERGER: I can't ask her if she made such
22 statements?

23 THE COURT: I have absolutely no reason --
24 you know what, Mr. Berger, I'm not going to rule on
25 something before you do it. You ask whatever questions

1 you want to ask, and I'll make the ruling.

2 I will see you all 2:00. We can't bring your
3 client up until you are here, Mr. Berger. I would like
4 to get started with this jury as close to 2:15 as
5 possible.

6 (Whereupon, a luncheon recess was taken.)

7 * * *

8

9 A F T E R N O O N S E S S I O N

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11

12 THE CLERK: Case on trial continued,
13 indictment 724N of 2014, People of the State of New
14 York vs. Daniel Ramos. All parties are present. The
15 jury is not present at this time.

16 Let the record reflect we have a change of
17 interpreters. Could you please put your appearance on
18 the record?

19 THE INTERPRETER: Rudolfo Escalente.

20 THE CLERK: People ready?

21 MR. PERRI: Yes, your Honor.

22 MR. BERGER: Yes, your Honor.

23 THE COURT: Anything for the record before we
24 bring the witness in?

25 MR. PERRI: With respect to your ruling and

1 regarding the subpoena, we want to bring to the Court's
2 attention as we were aware, prior to an unrelated -- to
3 this incident, the mother of the complainant, Crystal
4 Ramirez, was the victim of domestic violence where the
5 arrest was made of the father of the children, a
6 Christian Feliciano, that case was an arrest of assault
7 in the third degree and endangering the welfare of both
8 children. This occurred in 2012.

9 Prior to that, additionally, your Honor, this
10 family, and I believe this is the source, additionally,
11 why there may be therapy in the background. Also, it
12 is the People's position it is irrelevant to this
13 proceeding, that the son, Sincere Feliciano Ramirez,
14 was the victim of an attempted criminal sexual act in
15 the first degree, by his biological uncle, the brother
16 of his father. It is not the same victim in this case.
17 It has nothing to do with the defendant, but as part of
18 both of those cases, it's the People's belief that the
19 children in the family were recommended to therapy.
20 That does prove to be true. There is no relevant
21 information and none of those cases should be brought
22 up in this proceeding.

23 THE COURT: I'm going to still get the
24 records, and I'm going to inspect them in camera. If
25 in fact that is what the records reveal, then under the

1 case law, they would not be shared with either party,
2 and it would not be a proper basis of cross-examination
3 under the case law, and I did some quick research over
4 the lunch break. The only way those records will
5 become admissible, for lack of a better way to use it,
6 and sometimes the records themselves have to become
7 actually admissible, is if what is within those records
8 shows that the treatment has a bearing on the witness's
9 capacity to perceive events accurately and to recall
10 events accurately. But for that, the records would not
11 be admissible, nor anything related to the records
12 would be disclosed. So I can't cross a bridge until I
13 get to it when the records come in. After I review
14 them in camera, I'll advise both of you if there is
15 anything within them that relates to the witness's
16 ability to perceive and recall, and if there is not,
17 that will close out that issue.

18 MR. BERGER: For the record, it's not a
19 matter of perceiving accurately. It's a matter of
20 confusing reality from fiction.

21 THE COURT: Absolutely. I don't disagree.

22 MR. BERGER: This is the no perceiving things
23 accurately. The thing is our position is this never
24 happened. This girl is making this up. We want to be
25 able to show that she has a difficulty in making a

1 distinction between what is claimed here and what she
2 viewed in pornography, and not only that the prosecutor
3 is attempting, he brought -- he, himself, brought out
4 from Crystal the behavior of the child, Mya has changed
5 as a result. Well, why was it necessary to take them
6 to therapy then if their behavior was so good before?
7 The implication left for this jury is that this was a
8 fine normal child before and now all of a sudden as
9 this traumatic experience, now she modified her
10 behavior. Now we find out from the prosecutor, who
11 acknowledged there were other incidents that occurred
12 in the house that should be brought out as well.

13 THE COURT: You are the only one that brought
14 up therapy. I certainly didn't hear a question out of
15 the People's direct that asked this woman if her
16 children were in therapy. You brought it up, not the
17 People.

18 MR. BERGER: Therapy.

19 THE COURT: You are making -- you are the one
20 who has put before this jury the potential that these
21 children are now in therapy because of this event. The
22 People didn't ask that question.

23 MR. BERGER: They may not use the word
24 therapy. What do you think it was when he asked
25 whether or not her behavior changed?

1 THE COURT: So what. That's her behavior
2 changed.

3 MR. BERGER: No. What he is trying to say is
4 this is a traumatic experience that caused this child's
5 behavior to change. That's not -- we have a right to
6 challenge that. He brought that up, not I. He's the
7 one trying to suggest to this jury that this experience
8 so traumatized this girl, and that she now modified her
9 behavior. That is indeed now what we find out not to
10 be true, that it is acknowledged that the children were
11 in therapy before.

12 So, it is really the prosecutor who laid this
13 out. Had he not asked that question, different story,
14 but the fact of the matter is, our position is this
15 never happened, that this girl has -- she's six years
16 old, Judge. We're talking about a six-year old girl.
17 If she was exposed to pornography, that is significant.
18 If the Court doesn't think so, well, you and I differ,
19 but that is very significant. If that happened here
20 and that's the basis, and this is a sex type charge,
21 Judge. You are looking at pornography, and the Court
22 doesn't see a connection looking at pornography and
23 making a claim that you were sexually abused? That to
24 me, the connection is really obvious. It seems to me
25 when the district attorney brings it up -- he is the

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1 one that brought it up, not I, and I was trying to get
2 to the heart of the matter to show in our position
3 there's a confusion between what this child is going to
4 perhaps testify to here in court and what really
5 happened.

6 THE COURT: Anything else for the record?

7 MR. PERRI: Your Honor, the People oppose,
8 and we would like to state defense counsel is
9 mischaracterizing the People's questioning and what
10 they brought up on direct, and the degree to which the
11 final question about behavior touched on anything
12 whether the children were well-behaved beforehand or
13 afterwards, the question simply was about -- an answer
14 was simply about one change in behavior, not whether
15 she was well-behaved before, in therapy before, or
16 afterwards, just that she was covering up her private
17 areas afterwards.

18 MR. BERGER: Let's have the district attorney
19 make a representation to the Court as to why he asked
20 that question. Let's see if there is any good faith
21 there as to why he asked that question.

22 THE COURT: And Counsel, why don't you sit
23 down and I'm bringing over the jury and go over the
24 records when they get here. That's the end of this
25 conversation.

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1 Bring in the jury.

2 (Whereupon, the jury entered the courtroom.)

3 THE CLERK: Do both sides stipulate all sworn
4 jurors are present and seated properly?

5 MR. PERRI: Yes, your Honor.

6 THE CLERK: Defense counsel?

7 MR. BERGER: Yes, your Honor.

8 THE COURT: Welcome back. We'll get started
9 right away.

10 THE CLERK: Ms. Ramirez, you are reminded you
11 are still under oath.

12 CROSS-EXAMINATION

13 BY MR. BERGER: (Continuing)

14 Q. Ms. Ramirez, have you ever watched pornography in
15 your house?

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 Q. Ms. Ramirez, you made a 911 call; did you not?

19 A. Yes.

20 Q. Do you remember telling the 911 operator my
21 daughter is claiming that a family friend tried to eat her
22 out?

23 A. I don't remember if those were my exact words.

24 Q. Did you use that phrase, my family friend tried to
25 eat her out?

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1 MR. PERRI: Objection.

2 THE COURT: Sustained.

3 Q. You don't remember if those are the exact words;
4 is that what you are saying?

5 MR. PERRI: Objection.

6 THE COURT: Sustained.

7 MR. BERGER: May we approach?

8 THE COURT: You may.

9 (Whereupon, there was a sidebar discussion at
10 the bench, as follows:)

11 MR. PERRI: He's setting up the audio/visual
12 equipment in the courtroom. I anticipate he is going
13 to intend to play the 911 tape. It's hearsay. There's
14 no foundation. Additionally, prior inconsistent
15 statement. The only purpose defense counsel is seeking
16 in playing the 911 tape is an attempt to embarrass the
17 witness to use the words to describe the incident.
18 Although, possibly describing as crass are accurate.

19 THE COURT: Under what theory do you have all
20 the right to play 911 tape?

21 MR. BERGER: The prosecutor is saying we
22 don't introduce 911 calls. This is a witness who made
23 the statement.

24 THE COURT: It's a hearsay statement. Under
25 what theory is it coming in?

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1 MR. BERGER: She is saying she doesn't
2 remember. We're going to refresh her recollection.

3 THE COURT: How is it relevant?

4 MR. BERGER: Judge, it's relevant. You
5 didn't allow me to ask about pornography. How could
6 you stop me from asking about pornography when you are
7 making a representation to the Court the question is
8 inappropriate here. It has nothing to do with therapy
9 before.

10 THE COURT: Counsel, if you did any research,
11 you would know that even if this Court found in the
12 records something that made it possible that the
13 children have an inability to perceive reality, the
14 reason behind it is never relevant.

15 MR. BERGER: Really?

16 THE COURT: Really. You need to read the
17 cases. So the fact of the matter is, how this witness
18 chooses to live her life in this case is irrelevant to
19 the actions that the People --

20 MR. BERGER: It's laying a foundation here.
21 A foundation that this witness, the complainant saw
22 these things. She made that statement.

23 THE COURT: Okay. And how is it not hearsay?
24 How is it not an out-of-court statement offered for the
25 truth under absolutely no exception to hearsay rule

kmm

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1 other than a prior? I don't know what it is, a prior
2 what?

3 MR. BERGER: It's going to inconsistent
4 statement uttered by the complainant. Theoretically,
5 in this case. I don't know. Let's find out what the
6 complainant said. Why are we protecting this witness?

7 THE COURT: I'm trying to follow the rule of
8 law here. I want to know from you under what theory it
9 is permissible for this to come in.

10 MR. BERGER: Res gestae, excited utterance,
11 whatever it is. It's all coming in. For a prosecutor
12 that asked 911 tapes can't come in, have you ever heard
13 that before? I have never had a prosecutor not
14 introducing 911 calls. It's all of the time.

15 MR. PERRI: You have to lay a foundation.

16 MR. BERGER: Excited utterance, res gestae.
17 This witness didn't rule those were her exact words. I
18 was going to refresh her recollection.

19 MR. PERRI: Even if it was, if you were
20 refreshing her recollection, it should not be played in
21 court and not played in front of the jury.

22 THE COURT: Fair enough. You can play it for
23 her and then we can see what happens.

24 You would like an opportunity to refresh the
25 witness's recollection with words she may have used to

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1 the 911 operator?

2 MR. BERGER: Yes, I would.

3 THE COURT: You are given another break. See
4 you all in five minutes. Don't talk about the case.

5 (Whereupon, the jury exited the courtroom.)

6 (Whereupon, the 911 tape was played for the
7 witness.)

8 Q. Did you hear that?

9 A. Yes.

10 Q. Does that refresh your recollection of what you
11 said?

12 A. Yes.

13 THE COURT: We'll bring the jury back in and
14 you can ask that question.

15 MR. PERRI: Before the jury comes back in,
16 the People still objecting to the whole line of
17 questioning. There is nothing consistent shown between
18 what the witness just said in comparison to the tape
19 that was played to refresh her recollection.

20 THE COURT: All right. I'll wait for a
21 question to be asked.

22 MR. PERRI: Yes, your Honor.

23 (Whereupon, the jury entered the courtroom.)

24 THE CLERK: Do both sides stipulate all sworn
25 jurors are present and seated properly?

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1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense counsel?

3 MR. BERGER: Yes.

4 THE CLERK: You are reminded you are under
5 oath.

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MR. BERGER: (Continuing)

9 Q. Did you have opportunity to hear the 911 call?

10 A. Yes.

11 Q. Just a moment ago without the presence of the
12 jury?

13 A. Yes.

14 Q. And does that refresh your recollection as to what
15 you said?

16 A. Yes.

17 Q. Did you say to the 911 operator, my daughter is
18 claiming a family friend tried to eat her out?

19 A. Yes.

20 Q. Did you also say to the 911 operator, quote, she
21 said, he ate her coochie; did you say that?

22 A. Yes.

23 Q. What does it mean, to eat, Ms. Ramirez?

24 MR. PERRI: Objection.

25 THE COURT: Overruled. Do you understand the

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1 question?

2 THE WITNESS: Yes.

3 THE COURT: You can answer it.

4 Q. What does it mean to eat?

5 A. It's another terminology as putting your mouth on
6 someone's vagina.

7 Q. It's an oral sex phrase; is it not?

8 A. Yes.

9 Q. And so, you said your daughter said that to you,
10 where did your daughter learn that word to eat in sexual
11 context?

12 MR. PERRI: Objection.

13 THE COURT: Sustained.

14 Q. Do you use that term in your house?

15 MR. PERRI: Objection.

16 THE COURT: Sustained.

17 Q. Nevertheless, your daughter made that statement to
18 you, correct?

19 A. Not in those exact words.

20 Q. Didn't you tell the 911 operator she said he ate
21 her coochie?

22 A. Yes.

23 Q. You were quoting your daughter; were you not?

24 A. Yeah.

25 Q. Now, when you came into the kitchen and you said

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1 what the F is going on, did you use the word F?

2 MR. PERRI: Objection.

3 Q. Or did you say the F word?

4 THE COURT: Overruled.

5 A. I said the F word.

6 Q. And you said that in front of your daughter?

7 A. Yes.

8 Q. Do you use the word to eat in your everyday
9 language in front of your kids?

10 MR. PERRI: Objection.

11 THE COURT: Sustained.

12 Q. Did you tell Daniel you were going to call the
13 police?

14 A. Yes.

15 Q. Now, you told us before that you were in the
16 kitchen, you went to Mya, pulled up her pants, correct?

17 A. No.

18 Q. Did you tell us that?

19 A. No.

20 Q. What did you tell us?

21 A. I said, I picked her up and put her on my bed and
22 trying to put her clothes back on her.

23 Q. And you put her clothes back on, correct?

24 A. Correct.

25 Q. Now, was your daughter interviewed by the police?

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1 A. Yes.

2 Q. Who did that?

3 A. I don't remember the officer's name.

4 Q. Interviewed by the police at your home or
5 somewhere else?

6 A. I honestly don't remember.

7 Q. Do you remember she was interviewed by the police,
8 but you don't remember where it happened?

9 A. Yes, because there was police, detectives,
10 ambulance workers. There was a lot of enforcement.

11 Q. I'm not asking you to tell me the name. I'm
12 asking you to tell me where it happened.

13 A. I think they talked to her at my home and in the
14 hospital, but I don't remember if it was the officers, or if
15 it was the detectives. There was a lot of people there.

16 Q. All I'm asking you is: You have to have been
17 present if you are telling us she was interviewed by the
18 police, correct?

19 A. No, they had us separated at all times after the
20 police showed up.

21 Q. Then you don't know if she was interviewed by the
22 police, correct?

23 A. Okay, no.

24 Q. Is it correct either she was or wasn't?

25 A. Then I don't know.

1 Q. Now, in the summer of 2002, you and a girlfriend
2 physically accosted another girl and robbed her of her
3 purse, correct?

4 A. I did not rob her. I did not rob her.

5 Q. You and your girlfriend, who you were with, took
6 her purse, correct?

7 A. No.

8 Q. Who took her purse?

9 A. My friend at the time.

10 Q. And you got into a fight with this girl, correct?

11 A. Yes.

12 Q. And the both of you ran away after the fight?

13 A. I didn't run away. My friend left.

14 Q. Didn't you say you ran away?

15 A. I did not say I ran away.

16 Q. You answered Mr. Perri before, you said your
17 friend grabbed the bag and you both left the scene; do you
18 remember saying that?

19 A. Yeah, I went home.

20 Q. But you ran away from the incident?

21 A. I did not run away.

22 Q. What did you do?

23 A. I just smacked her and then I left. I went home.

24 Q. But you saw the girl take your friend take her
25 purse, correct?

1 A. No, that's what the police told me when I was
2 arrested.

3 Q. So when you told Mr. Perri before that your friend
4 grabbed her purse, was that true?

5 A. It wasn't a purse, it was a beach bag and that is
6 what I was told by the officers.

7 Q. You answered Mr. Perri before, you didn't say I
8 was told that her beach bag was taken, you said the friend
9 grabbed the bag and you both left the scene; do you remember
10 saying that to him?

11 A. I don't remember saying that word for word.

12 Q. In substance, didn't you say that to Mr. Perri
13 before?

14 A. Yes, she took the girl's beach bag.

15 Q. Part of it was as an assault that you inflicted
16 upon that girl, correct?

17 A. Yes.

18 Q. You told us on the day in question, somebody named
19 Prince came to your house?

20 A. To my apartment, yes.

21 Q. And all he came for was to smoke a cigarette?

22 A. No, he saw me in the deli, and I was upset over my
23 brother passing away.

24 Q. And he came to your house?

25 A. He walked with me back to my apartment, yes.

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1 Q. When you went back to your apartment, did you just
2 smoke a cigarette with him?

3 A. Yes.

4 Q. And then he left?

5 A. Yes. He was standing there talking and because he
6 was on his way going somewhere else.

7 Q. Was Daniel Ramos with you at the time?

8 A. Yes.

9 Q. Where was he?

10 A. He was sitting on the porch.

11 Q. If I understand, you came, you left the deli, you
12 met Prince there, right?

13 A. Yes.

14 Q. And where was Mr. Ramos when you were at the deli?

15 A. He was walking with me. He was with me.

16 Q. He was at the deli as well?

17 A. Yes.

18 Q. And where was -- before you went to the deli,
19 where were you?

20 A. Excuse me?

21 Q. Where were you before you walked to the deli?

22 A. Before I walked in the deli, I was at my
23 apartment.

24 Q. At your apartment?

25 A. Yes.

kmm

C. Ramirez - People - Cross

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1 Q. You asked Mr. Ramos to come with you?

2 A. I said, I'm going to go to the deli. Do you want
3 to go with me, and he came with me.

4 Q. And when was this, at what time?

5 A. I don't know the time.

6 Q. And when you are there, you met Prince?

7 A. Prince was in the deli.

8 Q. And then you came back to your apartment?

9 A. Yes, he was walking with me and talking with me.

10 Q. And so was Mr. Ramos; is that right?

11 A. Yes.

12 Q. Can you tell us what behavior Mya exhibited prior
13 to going to the South Shore Child Guidance Center?

14 MR. PERRI: Objection.

15 THE COURT: Sustained.

16 Q. Did you go to the child guidance center with
17 Sincere and Mya?

18 MR. PERRI: Objection.

19 THE COURT: Sustained.

20 Q. When Daniel drove you there, were both Mya and
21 Sincere in the car?

22 MR. PERRI: Objection.

23 THE COURT: I'll take an answer to that.

24 When you drove to this location, were the children in
25 the car with you?

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1 THE WITNESS: Yes.

2 Q. Was he driving you and the children there because
3 you requested him to do so, correct?

4 A. Yes, I asked him.

5 Q. And he did that quite a few times for you; did he
6 not?

7 A. Yes, he did.

8 Q. And did he ask you why you were going there?

9 MR. PERRI: Objection.

10 THE COURT: I'll take a yes or a no.

11 A. He knew.

12 Q. Did he ask you why you were going there with the
13 children?

14 A. No.

15 Q. He knew because you told him, correct?

16 A. Yes.

17 Q. You never saw Daniel lick your daughter's vagina,
18 did you?

19 A. No.

20 Q. And you were drinking, I think you said, three --
21 you were on your third Long Island Ice Tea?

22 A. Yeah.

23 Q. Ms. Ramirez, did you ever watch pornography with
24 your daughter in the room?

25 MR. PERRI: Objection.

Proceedings

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1 THE COURT: Sustained.

2 MR. BERGER: I have nothing further. Thank
3 you.

4 THE COURT: Any redirect?

5 MR. PERRI: No, your Honor.

6 THE COURT: Thank you, Ms. Ramirez. You may
7 step down. Please be careful.

8 You will call your next witness.

9 MR. PERRI: People call Sincere Feliciano
10 Ramirez.

11 THE COURT: I'll have everybody sit tight.

12 Mr. Perri, go into the back and make a phone
13 call.

14 As you could see, the logistics are sometimes
15 difficult. We're away from the main area. I'm going
16 to excuse you for a few minutes while the next witness
17 travels over to the building.

18 Please remember, don't talk about the case
19 when you are walking back and forth. Don't get on your
20 phones and do research. Don't let anyone talk to you
21 about this case in your presence. Enjoy your short
22 break.

23 (Whereupon, the jury exited the courtroom.)

24 THE COURT: I understand there's something
25 for the record before we have the next witness.

1 MR. BERGER: I'm moving for a mistrial in
2 this case. You have made it impossible for me to
3 defend this case with your rulings here. You are
4 bending over backwards to protect Crystal and the
5 entire prosecution case. We already had testimony from
6 Crystal. Her daughter said, he ate her coochie.
7 Where does a six-year old come up with language like
8 that?

9 Clearly, the representation I made to the
10 Court that they, or at least my inquiry with respect to
11 the finding out if she watched pornography in front of
12 her kids, you refused to allow me to go into it. I'm
13 representing to the Court my client has told me that
14 Crystal Ramirez told him that they watched
15 pornography -- not Daniel, but that Mya and her son,
16 with Crystal, watch pornography in her house. You
17 won't allow me to explore that? I hope that she would
18 tell the truth. If she doesn't, fine. You are not
19 even allowing me to go into these areas. It's just
20 cutting me off where I cannot explain it to this jury.
21 I should be able to explain to this jury where this
22 comes from, where this claim comes from.

23 There's a six-year old using the phrase ate
24 her coochie. I mean, that has to have come from the
25 mother from watching pornography, and you are not

1 allowing me to pursue it. You should be allowing me to
2 pursue it because I can't defend the case properly
3 unless you let me challenge these witnesses, and the
4 witnesses are protected by the Court's rulings here.
5 Not to allow me to ask her if she ever watched
6 pornography, how is that not permitted? You are going
7 to say relevance. How about giving the defendant and
8 the cross-examiner a little bit of leeway in this area
9 because after she admits that she watches pornography,
10 then I will go into the area where she watched it with
11 her daughter and her son, but you cut it off.

12 I have the right to show she is an inadequate
13 parent that allows something like that. We know
14 already from her testimony that her daughter used that
15 language. Six-year olds don't use that language, not
16 unless there's a basis to have to know it; either being
17 told that or watching pornography. If there is some
18 other explanation, then let Ms. Ramirez explain it.
19 The Court is just cutting the defense off in all areas
20 here, and I think it's inappropriate. I'm moving for a
21 mistrial.

22 THE COURT: People, do you want to be heard?

23 MR. PERRI: The People would oppose defense
24 counsel's application. There's been no circumstances
25 requiring a mistrial.

1 Additionally, your Honor, the People would
2 like to ask the Court if its recollection differs, to
3 examine the record, because the witness testified that
4 although she used the term ate my coochie on the 911
5 call and acknowledged that she used that term, when
6 asked is that what her daughter said, not those exact
7 words, and on direct she said, my daughter said, he
8 licked my coochie.

9 Regardless, your Honor, defense counsel
10 revealed the real purpose as to why he wants to ask the
11 questions before the jury, and he has the right to
12 argue she is inadequate as a guardian. And that the
13 purpose of defense counsel's argument, rather than
14 challenge the actual credibility of the witness, or
15 factually challenge anything she is saying with regard
16 to what her daughter reported or what she observed in
17 the room is simply to portray her as a bad mother, and
18 therefore, to be her attempts to call the police and
19 every action she did afterward, should be ignored.

20 It's not probative, it's no relevant, and the
21 People oppose that testimony and oppose a mistrial,
22 your Honor.

23 MR. BERGER: According to the prosecution,
24 nothing the defense does is probative or relevant. It
25 seems to me, that first of all, Mr. Perri is wrongfully

1 quoting what happened here. Not what she said on
2 direct, but what she said on cross-examination. Of
3 course, she tried to get away with saying those are not
4 my words. When I played the tape for her, those were
5 her words. Not only that she attributed her daughter
6 making statements, he ate my coochie. I don't know
7 what he is hearing in the courtroom. It's clear to me
8 what was said, and it is clear to me what was on the
9 tape.

10 The point is, you cannot cut off the defense
11 from exercising its right to cross-examine and confront
12 witnesses with things that are very relevant here. If
13 she is a bad parent, which is part of what I might
14 argue, that's all part of having your child watch
15 pornography and then make this claim. I mean, she
16 knows this defendant for years. She allowed him to be
17 with the kids and baby-sit the kids. Never once, ever
18 -- now all of a sudden I can't challenge this
19 outrageous claim by this six-year-old girl? The Court
20 is not allowing me to pursue the defense that I need to
21 pursue. There has to be the right to press the witness
22 and cross-examine witnesses and to make a case even if
23 I'm making the case through the prosecution witness.

24 THE COURT: With regards to the request for
25 mistrial, that request is denied.

1 Mr. Berger, as I stated to you earlier today,
2 I will be looking at these records in camera. It's
3 within these records that you have put forth
4 information regarding there being some watching of
5 pornography that makes the child incapable of telling
6 the difference between reality and fantasy, and that
7 through the therapy, that is how the Court will learn,
8 because I will be doing it in camera that this witness,
9 the young child, should not be found credible, should
10 not be swearable and possibly should not be allowed to
11 testify. That was your request of the Court.

12 I told you, I would like the records in
13 camera. I then advised you if there was anything
14 within the records that supported your position, I
15 would give you the opportunity to have this witness
16 recalled. I'm still going to give you that
17 opportunity, should it become relevant and necessary.
18 I'm not going to allow some fishing expedition or some
19 series of questions that you want to ask simply because
20 you want to ask them. This is a court of law. I
21 appreciate that you want to put on a defense, but there
22 are rules and there are laws that dictate how cases of
23 this matter are tried and are handled, and I will not
24 change my rulings just because you want it to be
25 different than that. Your motion for a mistrial is

1 denied.

2 MR. BERGER: The answer is not -- the issue
3 is not whether or not there was therapy based upon
4 seeing the pornography. The defense is she saw the
5 pornography; whether or not it required therapy to deal
6 with that issue is a side issue. Maybe that is true
7 and maybe it is not accurate. I'm not sure what the
8 therapist -- how far the therapist got and whether he
9 reached that.

10 But still, it becomes relevant just to
11 discover whether or not this child watched pornography.
12 If you don't think that that becomes relevant in a
13 claim which this girl makes this claim out of the blue
14 after knowing the defendant for years and having the
15 mother who had no such inkling that the defendant would
16 even do something like this. If you don't think that's
17 relevant in this kind of a case -- Judge, we have a
18 serious disagreement, but as somebody who has tried
19 these kinds of cases before, I can't think of something
20 more relevant than a six-year old using language, he
21 ate my coochie, and you wouldn't even let me get into
22 where she learned that language. You wouldn't even let
23 me ask her, Ms. Ramirez, where her child comes up with
24 that language. She tried to sanitize things by saying,
25 I said to him, what the F is going on here. She didn't

1 use the word F. She used the F word. Mr. Perri wants
2 to sanitize everything Ms. Ramirez comes in before this
3 Court so this jury thinks, oh, she is quite the mother.
4 I didn't use the F word. It turns out she did. What
5 the F is going on here? It seems to me when the
6 prosecutor is trying to sanitize things, the Court
7 should be aware of that.

8 I don't know if there is any harm to
9 Ms. Ramirez, if you allow me to ask her these questions
10 presumably, she will tell the truth, that she's watched
11 pornography. Whether or not she acknowledges that she
12 watched it with her daughter, that's something else, we
13 won't know until you let me ask it. I think it's
14 relevant, and I understand the Court doesn't think so.

15 THE COURT: With that being said, my ruling
16 is my ruling.

17 People, are we ready for the jury?

18 MR. PERRI: Yes, I believe so.

19 THE COURT: Mr. Berger, are we ready for the
20 jury?

21 MR. BERGER: Yes.

22 (Whereupon, the jury entered the courtroom.)

23 THE CLERK: Do both sides stipulate all sworn
24 jurors are present and seated properly?

25 MR. PERRI: Yes, your Honor.

S. Ramirez - People - Direct

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1 THE CLERK: Defense counsel?

2 MR. BERGER: Yes.

3 MR. PERRI: People call Sincere Feliciano
4 Ramirez.

5 S I N C E R E F E L I C I A N O R A M I R E Z, called on
6 behalf of the People, having been duly sworn, took the
7 witness stand and testified as follows:

8 THE CLERK: State your name and spell your
9 name for the record.

10 THE WITNESS: My name is Sincere Feliciano
11 Ramirez. S-I-N-C-E-R-E, F-E-L-I-C-I-A-N-O,
12 R-A-M-I-R-E-Z.

13 THE CLERK: What county do you live in?

14 THE WITNESS: Nassau.

15 THE COURT: Mr. Ramirez, my name is Teresa
16 Corrigan. I'm the judge in this matter today. I know
17 you know you will be asked some questions. I need you
18 to do a few things for me. I need you to keep your
19 voice up, so use the microphone if you need it. Wait
20 for the entire question to be asked before you start to
21 speak because the young lady sitting in front of you is
22 taking down everything that is being said, and she can
23 only take down one person talking at a time; do you
24 understand?

25 THE WITNESS: Yes.

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1 THE COURT: If you don't understand a
2 question, let me know and we'll make sure it's asked
3 again so you understand, okay?

4 THE WITNESS: All right.

5 DIRECT EXAMINATION BY

6 MR. PERRI:

7 Q. Good afternoon, Sincere.

8 A. Good afternoon.

9 Q. You have to speak into the microphone.

10 A. Good afternoon. I'm sorry.

11 Q. Sincere, how old are you?

12 A. Eleven.

13 Q. What is your birthday?

14 A. September 22nd.

15 Q. And what year were you born?

16 A. 2003.

17 Q. How old are you today?

18 A. Eleven.

19 Q. Where do you currently live?

20 A. Roosevelt.

21 Q. What is your street address?

22 A. 124 Park Avenue.

23 Q. Were you living there on October 16, 2013?

24 A. Yes.

25 Q. Who do you live there with?

S. Ramirez - People - Direct

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1 A. My mom and my sister Mya.

2 Q. What is your mother's name?

3 A. Crystal Ramirez.

4 Q. What is your sister's name?

5 A. Mya Feliciano.

6 Q. How old is your sister?

7 A. Seven.

8 Q. Is that how old she is today?

9 A. Yes.

10 Q. Could you describe the layout of your apartment?

11 A. First there is a porch, then there is the living
12 room, my mom's room to be exact, then there is the closet
13 which she has in her room, and then there is a kitchen, my
14 room, me and my sister's room and the bathroom.

15 Q. Now, do you have a video game system?

16 A. Yes.

17 Q. Where do you normally keep the video game system?

18 A. In my room, my mom's room.

19 Q. Do you ever play in your mother's room?

20 A. Yes.

21 Q. Why do you sometimes play in your mother's room?

22 A. It has a great look onto the TV. The TV is
23 better.

24 Q. Sincere, do you go to school?

25 A. Yes.

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1 Q. What school do you go to?

2 A. Washington Rose.

3 Q. What grade are you in?

4 A. Sixth.

5 Q. Do you have one teacher or multiple teachers?

6 A. Multiple.

7 Q. Who?

8 A. Younglin, Ms. Jackson and Mr. Torres.

9 Q. Do you know a man named Daniel Ramos?

10 A. Yes.

11 Q. How do you know him? Who is he to you?

12 A. Well, he used to be a family member and a friend
13 but not anymore.

14 Q. Has he been to your apartment?

15 A. Yes.

16 Q. Has he been there more than once?

17 A. Yes.

18 Q. Do you see him in the courtroom today?

19 A. Yes.

20 Q. Could you point to him and identify him by saying
21 a color of an item of clothing that he is wearing?

22 A. He's wearing a white shirt and glasses and --

23 MR. PERRI: May the record reflect the
24 witness identified the defendant.

25 THE COURT: It will so reflect.

S. Ramirez - People - Direct

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1 Q. Sincere, I want to draw your attention, I want you
2 to think about October 16, 2013; do you remember that day?

3 A. Yes.

4 Q. What grade were you in on October 16, 2013?

5 A. I don't know.

6 Q. If you go back -- if you go back to just this past
7 October of this school year, what grade were you in?

8 A. Fifth grade.

9 Q. And when you were in fifth grade, who was your
10 teacher?

11 A. Ms. Rodriguez and Ms. Jackson.

12 Q. In October of 2013, were you living at 124 Park
13 Avenue?

14 A. Yes.

15 Q. And Mya and mother were living with you at that
16 same apartment?

17 A. Yes.

18 Q. On that date did you go to school?

19 A. Yes.

20 Q. Did you come home from school?

21 A. Yes.

22 Q. When you came home from school, was there anyone
23 at your apartment?

24 A. Mom, Mya and Danny.

25 Q. And when you say, Danny, is that the defendant,

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1 Daniel Ramos?

2 A. Yes.

3 Q. When you came home from school, where did you go?

4 A. Went to my room, did my homework and got the Play
5 Station III and played it in my mom's room.

6 Q. Was your sister inside with you?

7 A. Yes.

8 Q. What was she doing?

9 A. She was playing with her toys and then she was
10 just all over the place.

11 Q. On October 16, 2013, that afternoon after you came
12 home from school, once you were playing video games in your
13 mother's room, did there come a time when the defendant
14 came inside of your apartment?

15 A. Yes.

16 Q. And did you see the defendant?

17 A. Yes.

18 Q. Did you see him while you were in the living room?

19 A. Yes.

20 Q. What, if anything, did you observe happen between
21 the defendant and your sister Mya while you were in the
22 living room?

23 A. Mya said that her tooth was hurting and Danny
24 said, let me take care of it, let me handle it, and then the
25 kitchen door was open and Mya and Danny went to the kitchen.

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1 He closed the door, and yeah.

2 Q. And what did you continue to do after the
3 defendant went into the kitchen with Mya and closed the
4 door?

5 A. Just played video games and thinking he is going
6 to do something with the tooth.

7 MR. BERGER: I did not hear the answer.

8 Could the reporter please read it back.

9 (Whereupon, the record was read back.)

10 THE COURT: Next question.

11 Q. Did there come a time when your mother, Crystal,
12 came into the apartment?

13 A. Yes.

14 Q. Did she come into the living room?

15 A. Yes.

16 Q. And did she stay there in that first living room
17 with you?

18 A. Yes. No, no.

19 Q. And what did you do after coming into the living
20 room?

21 A. She was about to go into the kitchen, get
22 something and then when she opened the door, she found Danny
23 and Mya.

24 MR. BERGER: Objection.

25 THE COURT: I'm sorry.

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1 MR. BERGER: I object. I didn't hear the
2 question.

3 THE COURT: The last answer was, went into
4 the kitchen and found Danny and Mya. Are you
5 objecting?

6 MR. BERGER: No, no.

7 Q. Could you describe what, if anything, your mother
8 said when she opened the door and walked into the kitchen?

9 MR. BERGER: Objection.

10 THE COURT: Overruled.

11 A. She said what -- the, you know, she said what the
12 F is going on. What are you doing? She just started
13 yelling and screaming.

14 Q. And what did you do after you heard your mother
15 yelling and screaming?

16 A. I immediately turned off the game.

17 MR. BERGER: I can't hear the answer.

18 A. I immediately turned off the game.

19 Q. Did there come a time when you looked into the
20 kitchen?

21 A. Yes.

22 Q. What, if anything, did you see when you looked
23 into the kitchen?

24 A. I saw Mya's pants on the ground, only saw like a
25 slight piece of it. Yes.

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1 MR. BERGER: I can't hear.

2 THE COURT: Sit as close as you can. Read it
3 back.

4 (Whereupon, the record was read back.)

5 Q. Now, Sincere, after you saw Mya's pants on the
6 ground, what, if anything, did you see happen next in the
7 kitchen?

8 A. I just saw -- I just -- she was just yelling,
9 screaming, and then mom put Mya on the bed and she started
10 to get Danny out of the house, out of the apartment and then
11 locked the door and started asking Mya questions.

12 Q. What, if anything, did the defendant say during
13 all of this?

14 A. He said don't believe Mya. Mya is lying, stuff
15 like that.

16 Q. And once the defendant left the house, did he say
17 anything else?

18 A. He kept on saying the same thing over and over
19 again. And then like around fifteen, twenty seconds later
20 he said he admitted.

21 Q. Did he admit that he did it?

22 A. Yes.

23 Q. Did anyone call 911?

24 A. Yes.

25 Q. Who was that?

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1 A. Mom.

2 Q. Did the police, in fact, respond to your
3 apartment?

4 A. Yes.

5 Q. Did more than one police officer come to the
6 apartment?

7 A. Like three vehicles came, yes.

8 Q. Was the defendant outside your apartment when the
9 police arrived?

10 A. Yes.

11 Q. Did there come a time when you left your apartment
12 that afternoon in the early evening?

13 A. Yes.

14 Q. And what type of vehicle did you leave in?

15 A. In an ambulance.

16 Q. And where did that ambulance go?

17 A. We went to the hospital.

18 Q. Once you were done or after the hospital, where
19 did you guys eventually go?

20 A. Home.

21 MR. PERRI: Nothing further, your Honor.

22 THE COURT: Thank you. Cross-examination.

23 MR. BERGER: Can we come up for a second?

24 THE COURT: You can.

25 (Whereupon, there was a sidebar discussion at

1 the bench, as follows:)

2 MR. BERGER: I want to be clear here. I have
3 no Rosario material from this young man; is that
4 correct?

5 MR. PERRI: Yes.

6 MR. BERGER: You never took any notes when
7 you talked to him?

8 MR. PERRI: No, I did not.

9 MR. BERGER: You just learned of this
10 supposed admission now. Do you know the content of the
11 admission?

12 THE COURT: I don't understand the basis of
13 your question at this point in time at the trial.

14 MR. BERGER: I want to make sure there are no
15 Rosario materials. He's not told this to any of the
16 police officers?

17 MR. PERRI: I'm not capable of answering that
18 question, but there are no Rosario materials.

19 THE COURT: Whether or not he said it is not
20 the same as whether or not there is Rosario material.

21 MR. BERGER: I understand. Okay.

22 (Whereupon, the proceedings resumed.)

23 CROSS-EXAMINATION

24 BY MR. BERGER:

25 Q. Did you talk to anybody before testifying here

1 today?

2 A. Yes.

3 Q. Who did you talk to?

4 A. I talked to -- I've talked to mom. I talked to
5 mom and I talked to --

6 Q. I'm sorry?

7 A. I talked to my mom and then I talked to --

8 THE COURT: If you don't remember, it's okay.
9 Just tell us who the person was.

10 A. I can't remember her name.

11 Q. You talked to your mother about this case?

12 A. Yes.

13 Q. Now, you say your mother was yelling and
14 screaming, right?

15 A. Yes.

16 Q. And she told Daniel to get out of the house?

17 A. Yes.

18 Q. Do you remember that?

19 A. Yes.

20 Q. And you say that Daniel -- where was Daniel when
21 you say he admitted it?

22 A. He was outside.

23 Q. What did he say?

24 A. He said, don't believe Mya, she is lying, she's
25 not telling the truth. Stuff like that.

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1 Q. Okay.. Is that what he said?

2 A. Yes.

3 Q. Anything else?

4 A. No.

5 Q. He didn't admit, did he?

6 A. No, he did admit it.

7 Q. You just told us he didn't say anything else?

8 A. I forgot about that.

9 Q. You forgot about what?

10 A. That he admitted it.

11 Q. You didn't forget when Mr. Perri asked you a few
12 minutes ago.

13 MR. PERRI: Objection.

14 THE COURT: Overruled.

15 You can answer the question.

16 Q. You didn't forget when Mr. Perri asked you before,
17 did you?

18 THE COURT: I need you to answer. Did you
19 remember when Mr. Perri asked you?

20 A. Yes. Well, to be honest, a little bit, but then I
21 started to forget about it.

22 MR. BERGER: I'm sorry, could the reporter
23 read that again?

24 THE COURT: Read it back.

25 (Whereupon, the record was read back.)

1 Q. What did he admit?

2 A. That I did it.

3 Q. Did what?

4 A. What he did to Mya.

5 Q. You didn't see what he did -- if he did anything
6 to Mya, did you?

7 A. No.

8 Q. Did you?

9 A. The door was closed.

10 Q. The answer is yes or no; which is it?

11 A. No.

12 Q. Now, my question to you is: What words did you
13 hear Daniel say when you say he admitted it?

14 A. Okay, I did do it to Mya.

15 Q. He did do what?

16 THE COURT: Do you remember the words? I
17 need you to tell us if you remember the words that you
18 heard.

19 A. No. Only I heard that he did do it, and he also
20 said something else that I can't remember.

21 Q. You remember him saying I didn't do it?

22 A. No, I did do it.

23 Q. And did he say that in response to what?

24 A. That he did, that he, um, that he did, um,
25 something to Mya. That he, um --

1 THE COURT: Can you close your eyes for me
2 and just think back and listen to the question and see
3 if you can give an answer to the question. You can
4 keep your eyes closed if you want. Go ahead and ask
5 the question again. See if you can get an answer.

6 Q. You heard Daniel say he didn't do it, correct?

7 A. Yes.

8 Q. And you heard him say that immediately, didn't
9 you, right away?

10 A. Yes.

11 Q. So, what was said after by Daniel, anything?

12 A. He just said that I admit it.

13 Q. He used the word, I admit it; is that what you are
14 saying he said?

15 A. Yes.

16 Q. Did you have a discussion with your mother before
17 testifying about this?

18 A. That, um, she told me that, I know that I can do
19 it.

20 Q. Did you tell anybody else that Daniel said he did
21 it?

22 THE COURT: Did you tell anybody else?

23 A. I can't remember.

24 Q. So is today the first day you are saying that
25 Daniel said he did it?

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1 THE COURT: Do you understand the question?

2 THE WITNESS: No.

3 THE COURT: Ask it a different way,

4 Mr. Berger.

5 Q. Sincere, you know you took an oath before. Did
6 you take an oath?

7 THE COURT: Use a different word.

8 Q. Do you remember swearing before?

9 A. Yes.

10 Q. What did you swear to do?

11 A. I swear to tell the truth.

12 Q. Tell the truth. So my question to you is: Did
13 you ever tell anybody prior to today that Daniel said he
14 admitted it?

15 A. Yes.

16 Q. Who did you tell?

17 A. Mr. Perri.

18 Q. When did you tell that to Mr. Perri?

19 A. A few hours ago.

20 Q. That's the first time you ever told anybody about
21 it?

22 A. Um, yeah, I think. Yes.

23 Q. A few hours ago you told that to Mr. Perri and
24 that's the first time you ever said that to anybody?

25 A. I said that to Mr. Perri the last time that we

1 were here.

2 Q. When were you here last time?

3 A. I think it was Friday or Thursday last week.

4 Q. Of last week?

5 A. Yes.

6 Q. You realized we're about a year-and-a-half after
7 October 16th of 2013, right?

8 A. Yes.

9 Q. You didn't tell anybody about this on that day,
10 did you?

11 THE COURT: You have to --

12 A. No.

13 Q. You didn't tell it to anybody that day or any
14 police because you were in the presence of police, weren't
15 you?

16 THE COURT: You don't understand the
17 question?

18 THE WITNESS: No.

19 Q. You saw police on October 16, 2013, didn't you?

20 A. Yes.

21 Q. You didn't tell them that, did you?

22 A. They didn't talk to me.

23 Q. They never talked to you?

24 A. They only talked to my mom.

25 Q. So, but, when you saw Mr. Perri last week,

1 Thursday or Friday, that's the first time you ever said
2 anything about Daniel admitting this?

3 A. I can't remember to be honest.

4 Q. You say Daniel -- what were the words he used?

5 MR. PERRI: Objection.

6 THE COURT: If you remember. Do you remember
7 the words that Daniel used, the exact words? If you
8 don't, that's okay. Just tell us one way or the other.
9 You need to say yes or no.

10 THE WITNESS: No.

11 Q. Does that mean you do not remember the words
12 Daniel used; is that correct?

13 THE COURT: Do you remember the words that
14 were used?

15 Let's do this. Approach.

16 (Whereupon, there was a sidebar discussion at
17 the bench, as follows:)

18 THE COURT: I'm not sure if he doesn't
19 remember the words, or he is embarrassed to say the
20 words. I don't know. I want to excuse the jury for a
21 couple of minutes. Unless you tell me he doesn't know
22 the words, he is sitting here looking to me. He is
23 embarrassed to say the words, and I don't want to ask
24 those questions. It's your cross-examination.

25 MR. PERRI: I understand defense counsel has

1 the right to cross-examine. He has asked -- he has
2 asked what did the defendant allegedly say and words
3 did he say, and the witness testified he said, I did
4 it. That has been testified to.

5 THE COURT: What he asked, what it was. We
6 don't really have an answer.

7 MR. PERRI: He may not. We're not alleging
8 he was present to see what was going on, or that he, as
9 a child, that he fully understands.

10 MR. BERGER: I can't hear you.

11 THE COURT: I will allow you to keep going
12 with your cross-examination. You can ask a few more
13 questions. I'll take any appropriate objections. You
14 have the right to cross a little bit to see if you can
15 get an answer. You let me know if you want to keep
16 asking questions.

17 (Whereupon, the proceedings resumed.)

18 CROSS-EXAMINATION

19 BY MR. BERGER: (Continuing)

20 Q. You heard Daniel say many times he did not do it;
21 do you remember that?

22 A. Yes.

23 Q. How many times did you say that he said that?

24 A. Like four or five times.

25 Q. And after he said that four or five times, what is

1 the next thing you heard him say?

2 A. I heard him say, um. He said, I did, um. He
3 said, I did lick Mya's, um, coochie.

4 MR. BERGER: I can't hear.

5 THE COURT: Let's have the reporter read it
6 back.

7 (Whereupon, the record was read back.)

8 Q. So, he says it four, five times, I didn't do it,
9 then right after that he says, I licked Mya's coochie?

10 A. Yes.

11 Q. You heard that?

12 A. Yes.

13 Q. Where were you when this was said?

14 A. On the porch.

15 Q. Where was he?

16 A. Outside.

17 Q. Where was Mya?

18 A. On the porch.

19 Q. Where was your mother?

20 A. On the porch. All of us were on the porch.

21 Q. All of you heard this, right, all of you were on
22 the porch?

23 A. Yes.

24 Q. But the first time you ever said this to anybody
25 was last week to Mr. Perri, correct?

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1 A. Yes. I think so, yes.

2 Q. You told us that the TV in your mother's room is
3 better, right? Do you ever watch movies on that TV?

4 A. Yes.

5 Q. Do you ever watch movies of people without their
6 clothes on on that TV?

7 MR. PERRI: Objection.

8 THE COURT: Yes or no.

9 A. No.

10 Q. Sincere, you are sure you never watched people
11 without any clothes on on the TV?

12 MR. PERRI: Objection.

13 THE COURT: Asked and answered.

14 MR. BERGER: That's the basis, just asked and
15 answered?

16 THE COURT: Sustained.

17 MR. BERGER: Let the record reflect the
18 witness is hanging his head down. He seems to be
19 upset.

20 THE COURT: Yes. The record should reflect
21 the witness is crying. Can you continue to answer some
22 questions for us? Do you need a break?

23 THE WITNESS: (Nodding)

24 THE COURT: Let's take a five-minute break.
25 Please don't discuss the case amongst yourselves or

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1 with anyone else during this break. Don't get on your
2 phones and look anything up. See you all in about five
3 minutes. Thank you.

4 (Whereupon, the jury exited the courtroom.)

5 THE COURT: See if the witness needs to use
6 the bathroom. You cannot ask Mr. Perri any questions
7 about testifying, okay? He's going to help you and see
8 if you need to use the restroom. You cannot ask him
9 about anything that is happening in the courtroom; do
10 you understand?

11 THE WITNESS: Yes.

12 (Whereupon, a short recess was taken.)

13 (Whereupon, the jury entered the courtroom.)

14 THE CLERK: Do both sides stipulate all sworn
15 jurors are present and seated properly?

16 MR. PERRI: Yes, your Honor.

17 THE CLERK: Defense?

18 MR. BERGER: Yes.

19 THE CLERK: Mr. Ramirez, you are reminded you
20 are still under oath.

21 THE WITNESS: Correct.

22 CROSS-EXAMINATION

23 BY MR. BERGER: (Continuing)

24 Q. Do you know what an oath is, Sincere?

25 MR. PERRI: Objection. Asked and answered.

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1 THE COURT: Overruled. I'll take an answer.

2 Q. Do you know what an oath is? Was that a no? I
3 didn't hear you.

4 A. I swear to the truth, that is what an oath is.

5 Q. What happens when you take an oath and you don't
6 tell the truth?

7 MR. PERRI: Objection.

8 THE COURT: Overruled.

9 What happens if you don't tell the truth.

10 A. You, um, you, um, you would not, um, be out of
11 here as soon as possible.

12 Q. You would what?

13 THE COURT: You will not be out of here as
14 soon as possible if you do not tell the truth.

15 Q. What does that mean? Sincere, if you don't know
16 the answer, you can say that. Do you know what an oath is,
17 yes or no?

18 MR. PERRI: Objection.

19 THE COURT: Sustained.

20 A. I don't know.

21 Q. Did you say, I don't know?

22 MR. PERRI: Your Honor, you sustained the
23 objection.

24 THE COURT: The objection is sustained.

25 MR. BERGER: If I ask him what an oath is,

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1 Judge?

2 THE COURT: Mr. Berger, you have asked the
3 question three times.

4 MR. BERGER: I haven't gotten an answer.

5 THE COURT: I believe you have, sir, and we
6 will check the record when we need to, outside the
7 presence of the jury.

8 MR. BERGER: Pressing a witness is what
9 cross-examination is about. I'm trying to be as easy
10 as possible with this man -- with this boy, rather. He
11 should be able to explain what it means if he doesn't
12 honor the oath.

13 THE COURT: The objection is sustained. Next
14 question.

15 Q. Sincere, did you say before that you did not know
16 what an oath is?

17 MR. PERRI: Objection.

18 THE COURT: Objection sustained.

19 MR. BERGER: Nothing further.

20 THE COURT: Any redirect?

21 MR. PERRI: No, your Honor.

22 THE COURT: Thank you can step down. Be
23 careful.

24 People, call your next witness.

25 MR. PERRI: The People call Officer Boccio.

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1 J O S E P H B O C C I O, Police Officer, called on behalf
2 of the People, having been duly sworn, took the witness
3 stand and testified as follows:

4 THE CLERK: Officer, please state your name,
5 spell your last name, give your shield and your
6 command.

7 THE WITNESS: Officer Joseph A. Boccio,
8 B-O-C-C-I-O. First Precinct. Nassau County, Shield
9 3462.

10 DIRECT EXAMINATION

11 BY MR. PERRI:

12 Q. Good afternoon, Officer Boccio. Who are you
13 currently employed by?

14 A. Nassau County Police Department.

15 Q. How long have you been a police officer with
16 Nassau County?

17 A. A little over seven years.

18 Q. Did you work in law enforcement before Nassau
19 County?

20 A. Yes.

21 Q. Who did you work for?

22 A. New York City Police Department.

23 Q. How long were you an officer with the New York
24 City Police Department?

25 A. A little short of four years.

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1 Q. What is your current assignment with the Nassau
2 County Police Department?

3 A. Police officer patrol.

4 Q. What precinct are you assigned to?

5 A. First.

6 Q. What area does the First Precinct cover?

7 A. It covers Roosevelt, Uniondale, Baldwin, South
8 Hempstead, East Meadow, North Bellmore and North Merrick and
9 a tiny smidgen of the Wantagh.

10 Q. Directing your attention to October 16, 2013, were
11 you working that day?

12 A. Yes.

13 Q. Were you working a day tour or night tour?

14 A. Day tour.

15 Q. What are the hours?

16 A. 7:00 a.m. to 7:00 p.m.

17 Q. Were you working in uniform or plainclothes?

18 A. Uniform.

19 Q. Alone or with a partner?

20 A. With a partner.

21 Q. Who was your partner?

22 A. Officer Thomas Wiggan.

23 Q. What kind of police car were you driving that day?

24 A. A marked car.

25 Q. At approximately 5:21 p.m. that day, did you

1 receive a radio assignment?

2 A. Yes, I did.

3 Q. What did you do in response to receiving that
4 radio assignment?

5 A. I responded to 124 Park Avenue in Roosevelt.

6 Q. When you arrived at that location, did there come
7 a time when you encountered a woman you later learned to be
8 Crystal Ramirez?

9 A. Yes, I did.

10 Q. Where was she?

11 A. Standing in the doorway by the steps.

12 Q. Was she alone?

13 A. No.

14 Q. Who was she with?

15 A. She was with a little girl, Mya Ramirez.

16 Q. Can you describe Mya Ramirez?

17 A. A young girl under the age of ten.

18 Q. Without going into the substance of anything
19 Crystal or Mya said, did you speak with them?

20 A. Yes, I did.

21 Q. At the time during the initial response, did you
22 take Mya away from her mother?

23 A. I did not.

24 Q. Is there an individual you learned to be Daniel
25 Ramos also present at the scene at the same time?

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1 A. Yes, he was.

2 Q. Do you see the person in the courtroom today?

3 A. Yes, I do.

4 Q. Point to him and identify him by an article of
5 clothing.

6 A. Sitting right there wearing a long piece of
7 clothing, white sweater.

8 MR. PERRI: I ask the record to reflect the
9 witness identified the defendant.

10 THE COURT: So indicated.

11 Q. Where was the defendant when you saw him that day?

12 A. Standing in the parking Lot B, twenty feet away
13 from Crystal, he was leaning up against the car.

14 Q. Did there come a time when you approached him?

15 A. Yes, I did.

16 Q. Did you approach him alone or with your partner?

17 A. Alone.

18 Q. Where was your partner while approaching the
19 defendant?

20 A. Still with Crystal Ramirez.

21 Q. When you approached the defendant, did you
22 identify yourself as a police officer?

23 A. Yes, I did.

24 Q. Where was your gun as you approached the
25 defendant?

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1 A. In my holster.

2 Q. Where were your handcuffs?

3 A. On the gun belt.

4 Q. Did there come a time when you spoke with the
5 defendant?

6 A. Yes, I did.

7 Q. What language did you use to speak to the
8 defendant?

9 A. English.

10 Q. Did you have any problem communicating with the
11 defendant in English?

12 A. Not at all.

13 Q. What language did he speak to you?

14 A. English.

15 Q. Did the defendant's response to your questions
16 make sense?

17 A. Yes, they did.

18 Q. During the conversation that you had with the
19 defendant, was he in handcuffs?

20 A. No, he was not.

21 Q. What, if anything, did you say to the defendant
22 when you approached him?

23 A. I asked him what is going on? Why am I here?

24 Q. What, if anything, did the defendant say in
25 response to that question?

1 A. He said, she said, I raped her daughter. Please
2 arrest me, or arrest me.

3 Q. And what, if anything, did you say after he said
4 -- after he said -- what, if anything, did you say after the
5 defendant said, she says, I raped her daughter, arrest me?

6 A. I said, I'm going to need a little more than that.

7 Q. What, if anything, did the defendant say after you
8 said, I'll need a little more than that?

9 A. He said, it was stupid, I licked her once in the
10 bedroom.

11 Q. After the defendant said it was stupid, I licked
12 her once in the bedroom, what, if anything, did you do next?

13 A. I placed him under arrest.

14 Q. When you placed him under arrest, did you give the
15 defendant instructions?

16 A. Yes.

17 Q. What instructions did you give him?

18 A. To place his hands behind his back.

19 Q. When you said that to him, what did he do?

20 A. Turned around and put his hands behind his back.

21 Q. Were you speaking English at that time?

22 A. Yes, I was.

23 Q. And where did you eventually place the defendant?

24 A. In the back of my marked police car.

25 Q. Approximately how long was the defendant in the

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1 back of the police car?

2 A. Approximately 30 minutes.

3 Q. Did you or any other police officer speak with him
4 while he was in the back of the police car?

5 A. No.

6 Q. Were there supervisors called to the scene?

7 A. Yes.

8 Q. Did there come a time when the defendant left the
9 scene in your custody?

10 A. Yes.

11 Q. Where was the defendant transported?

12 A. Special victims squad.

13 Q. Did you actually transport the defendant?

14 A. Yes, I did.

15 Q. At approximately what time did you transport the
16 defendant to the special victims squad?

17 A. Approximately 6:28 p.m.

18 Q. Did you and your partner speak with the defendant
19 while transporting to the special victims squad?

20 A. No.

21 Q. Where is the special victims squad located?

22 A. Bethpage, New York.

23 Q. Were you with the defendant while he was at the
24 special victims squad?

25 A. Most of the time.

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1 Q. And did you remain at the special victims squad
2 until the defendant was later transported to detention?

3 A. Yes, I did.

4 Q. Where was the defendant while he was at the
5 special victims squad?

6 A. He was placed in a room with a large glass window.

7 Q. And did you speak with him while at the special
8 victims squad?

9 A. Just once.

10 Q. Was he seen by other members of law enforcement?

11 A. Yes, he was.

12 Q. Who was he seen by while there?

13 A. Detective Baran and Detective Pacheco.

14 Q. Did there come a time when the defendant left the
15 arrest room, but remained in the special victims squad?

16 A. Yes.

17 Q. Can you explain what happened when that occurred?

18 A. Me and my partner took him to the bathroom.

19 Q. What, if anything, was the defendant offered while
20 at the special victims squad?

21 A. He was offered a slice of pizza.

22 Q. Did he actually get that piece of pizza?

23 A. Yes.

24 Q. Did there come a time that night when he left the
25 special victims squad?

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1 A. Yes.

2 Q. Where did the defendant eventually go?

3 A. Transported to 1490 Franklin Avenue in Mineola.

4 Q. What's located there?

5 A. Defense facility.

6 Q. Officer, did you, or to your knowledge, or any
7 other member of law enforcement, ever make any promises to
8 the defendant before you spoke to him at the scene?

9 A. No.

10 Q. Did you, or to your knowledge, any other members
11 of law enforcement ever make any promises to the defendant
12 at or before the defendant was brought to the special
13 victims squad?

14 A. No.

15 Q. At any point from the time you arrived at 124 Park
16 Avenue until the defendant was brought to the detention, did
17 you, yourself, threaten the defendant in any way?

18 A. No.

19 Q. Did you ever observe any other member of law
20 enforcement threaten the defendant during that same time
21 frame?

22 A. No.

23 Q. Did you observe any other members mistreat the
24 defendant in any way?

25 A. No, not at all.

kmm

1 Q. Before October 16, 2013, did you know the
2 defendant?

3 A. No.

4 Q. Before October 16, 2013, did you know Crystal or
5 Mya Ramirez?

6 A. No.

7 MR. PERRI: Nothing further, your Honor.

8 THE COURT: Thank you. Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. BERGER:

11 Q. Officer Boccio, the testimony you have given here
12 is based upon your own recollection of what you say happened
13 back in October of 2013, correct?

14 A. Some of it, yes.

15 Q. Did you tell me that all of it was based upon your
16 own independent recollection when we had a hearing?

17 A. No, it was not.

18 Q. You didn't tell me that?

19 A. At the hearing or today?

20 Q. At the hearing, did you tell me all or what you
21 testified to?

22 A. No, not everything.

23 Q. You testified at the hearing back on September 25,
24 2014?

25 A. I believe that was the date. I'm not sure.

1 Q. I'm telling you that's what the minutes reflect.

2 A. Okay.

3 Q. Were you under oath at the time?

4 A. Yes, I was.

5 Q. And were you asked this question and did you give
6 this answer?

7 MR. PERRI: Could I ask for a page?

8 Q. Page 13, line 18.

9 "QUESTION: So everything you testified to
10 here has been based upon your own recollection?

11 "ANSWER: Yes."

12 Did you make that answer to that question?

13 A. If I review the minutes -- I don't recall saying
14 that, what I said at the minutes. If I could review the
15 minutes.

16 Q. Do you want to look at this?

17 A. Sure.

18 Q. Look at line 18.

19 (Handing to the witness.)

20 A. Okay.

21 Q. Did you make that answer to that question?

22 A. I did at that point.

23 Q. When you did that, was it the truth?

24 A. Yes.

25 Q. Is it the truth today?

1 A. Yes.

2 Q. Now, I ask you, is everything you testified to in
3 connection with this case based upon your own independent
4 recollection?

5 A. Yes. But that line was in the middle of our
6 hearing, it wasn't at the end of it. There was stuff I had
7 to recall based on my notes.

8 Q. What was it that you had to recall based upon your
9 notes?

10 A. I believe it was the arrest time.

11 Q. You mean your memo book?

12 A. I don't recall if it was the memo book or the
13 arrest summary.

14 Q. Other than the arrest time, is there anything else
15 that you looked at your notes to help you out?

16 A. I don't remember on that day if anything else was
17 used for my notes. It may have been the time I transported
18 him to special victims.

19 Q. Other than the time of the arrest, the time you
20 transported him, I'm talking to you about what you did on
21 the day you went to 124 Park?

22 A. Okay.

23 Q. You testified to here today about certain things
24 that happened, certain conversations that were said, right?

25 A. Correct.

1 Q. That's based upon your own independent
2 recollection; is it not?

3 A. Yes.

4 Q. Now, you arrived at the scene and you saw Crystal
5 Ramirez and her daughter outside of the apartment, correct?

6 A. Correct.

7 Q. And you heard Crystal when you asked her what
8 happened, she said to you, the defendant?

9 MR. PERRI: Objection.

10 THE COURT: Sustained just as to form.

11 Q. Did Crystal say to you when you asked her what
12 happened that the defendant licked her daughter's coochie?

13 A. Correct.

14 Q. And that was said in the presence of Mya, correct?

15 A. Yes.

16 Q. You asked her whether Crystal saw it and she told
17 you no?

18 MR. PERRI: Objection.

19 THE COURT: Overruled.

20 Q. Correct?

21 A. I don't recall if I actually said that.

22 Q. Let me ask you, if you remember -- by the way, at
23 that hearing you were under oath, yes?

24 A. Yes.

25 Q. And at page twenty, line eight, did you make the

1 following answers to the following questions?

2 "QUESTION: Did you ask her if she saw that?

3 And you said, I did.

4 "QUESTION: What did she say?

5 "ANSWER: No, she did not see it."

6 A. Okay.

7 Q. Did you make those answers to those questions?

8 A. If they're in there, then yes, I did. I don't
9 recall independently if that's what I said that day.

10 Q. You don't recall independently what you said at
11 that hearing, correct?

12 A. I don't remember that specific line at the
13 hearing.

14 Q. That hearing was about eight, nine months ago?

15 A. Okay.

16 Q. You're testifying at a hearing in September of
17 2014, about things that supposedly were said to you almost a
18 year ago, correct?

19 A. Correct.

20 Q. All based upon your own independent recollection,
21 right?

22 A. Mostly.

23 Q. Except for the notes when arrested him and except
24 when you transported him?

25 A. Correct.

1 Q. Let's say with all of these supposed statements
2 that were made to you at the scene, you were remembering
3 them almost a year later, correct?

4 A. Correct.

5 Q. Without having written any notes or memorandum in
6 connection with what was said?

7 A. Correct.

8 Q. Now, you are telling us nine months later from
9 what you testified to under oath at the hearing, that you
10 don't remember saying that she said she didn't see it,
11 correct?

12 A. I don't recall if I said it that day.

13 Q. Right. That's only nine months ago, right?

14 A. Correct.

15 Q. You are testifying to what you remembered eleven
16 months prior to that, right?

17 A. Correct.

18 Q. So Crystal Ramirez gave you this answer to what
19 happened in front of her daughter, who was right next to
20 her, correct?

21 A. Correct.

22 Q. Did you make a note? Did you ask Mya a question
23 then?

24 A. Yes.

25 Q. Did you make a note of what Mya -- did you ask Mya

1 what happened?

2 A. I did.

3 Q. And you asked her that in front of her mother?

4 A. I did.

5 Q. And Mya said what?

6 A. I don't recall Mya's statement to me specifically.

7 Q. So, as you sit here now, you don't remember what

8 Mya said to you happened, correct?

9 A. Not specifically.

10 Q. In sum and substance?

11 A. That he licked her coochie.

12 Q. That's what you remember her saying?

13 A. Yes, something like that.

14 Q. After you had asked that of her mother, correct?

15 A. Correct.

16 Q. And then just moments after that you asked that of
17 Mya, right?

18 A. Correct.

19 Q. Where was the defendant, Mr. Ramos, when you went
20 over to Crystal and Mya?

21 A. He was standing in the parking lot leaning up
22 against the car about twenty feet away.

23 Q. How long had you arrived at the scene when you got
24 the radio call?

25 A. Repeat the question.

1 Q. You received the radio transmission requesting you
2 to go to 124 Park?

3 A. Correct.

4 Q. How long did it take you to get there?

5 A. A couple of minutes.

6 Q. So, did you ever take Mya aside and privately talk
7 to her?

8 A. No.

9 Q. Let me finish the question.

10 A. Okay.

11 Q. And privately talk to her out of the presence of
12 her mother?

13 A. No.

14 Q. Did you see anybody else take Mya aside and talk
15 to her privately out of the presence of her mother?

16 A. I did not personally.

17 Q. Was a statement taken from Mya, as far as you
18 know?

19 A. Um, I'm unaware if one was taken from Mya
20 directly.

21 Q. You are unaware, as far as you know, no statement
22 was taken from Mya by any police officer at the scene; is
23 that correct?

24 A. Not at the scene, no.

25 Q. At any other time?

1 A. I didn't go to the hospital with her and the
2 mother.

3 Q. All I'm asking is what you know at the scene.

4 A. No, not at the scene.

5 Q. Now, when you asked Mya what happened, there was a
6 delay, wasn't there?

7 A. Yes.

8 Q. Now, I take it you had the opportunity to read the
9 minutes of your testimony prior to testifying here today?

10 A. I did.

11 Q. Did you go over the testimony with anybody prior
12 to testifying?

13 A. I did.

14 Q. Who was that?

15 A. The district attorney, Anthony Perri.

16 Q. Did you discuss with him some of the things that
17 you said at the hearing?

18 A. I believe so, yes.

19 Q. When you asked Mya what happened, did it take a
20 minute-and-a-half to two minutes before she answered you?

21 A. Correct.

22 Q. Did you ever ask Mya who did it?

23 A. I did not.

24 Q. Did Mya ever say to you the name of the person
25 who, as you say, licked her coochie?

1 A. No, she did not.

2 Q. So, you asked her about what happened, it took her
3 about a minute-and-a-half to two minutes before she answered
4 your question, correct?

5 A. Correct.

6 Q. And you never asked Mya who did that to her,
7 correct?

8 A. No, I did not.

9 Q. And it was Crystal who gave you the name of the
10 defendant, not Mya; is that correct?

11 A. Correct.

12 Q. Now, you testified here, Officer Boccio, that the
13 defendant said to you, she is saying I raped her daughter,
14 correct?

15 A. Correct.

16 Q. Did you write that down anywhere?

17 A. No, not at the scene.

18 Q. You didn't write it down anywhere, did you?

19 A. Except on my notes after when I read my minutes.

20 Q. You mean the minutes of the hearing?

21 A. Correct.

22 Q. The hearing, we established was eleven months
23 after the incident, correct?

24 A. Correct.

25 Q. You claim you were referring at that hearing that

1 the defendant said, I raped -- arrest me, she is saying I
2 raped her daughter.

3 A. Correct.

4 Q. So that was based upon the hearing minutes you
5 were saying and the reporter was writing it down, correct?

6 A. I'm sorry repeat the question.

7 Q. The reporter was writing down what you said at the
8 hearing, correct?

9 A. Okay.

10 Q. Those are not your notes, that's what you
11 testified to, correct?

12 A. Correct. That's correct.

13 Q. When I asked you then, did you ever write down
14 that the defendant said arrest me, she says, I raped her
15 daughter. You never wrote that down?

16 A. I did write that down.

17 Q. Where did you write that down?

18 A. On a piece of paper that shows details, notes that
19 I prepared for the -- after reviewing the case.

20 Q. You just wrote those down recently, didn't you?

21 A. I didn't say when I wrote them down. I wrote them
22 down.

23 Q. Fine. You wrote them down. Now, a year
24 and-a-half after, and this is what you are claiming you are
25 writing in your notes?

1 A. Yes.

2 Q. I'm asking whether or not you contemporaneously or
3 within the same day wrote this down?

4 A. No, I did not.

5 Q. Based upon your own independent recollection, you
6 are claiming last September, that you remembered he said
7 that, right?

8 A. Correct.

9 Q. Without having the benefit of having written that
10 down prior to that time, correct?

11 A. Correct.

12 Q. Now, did you ever write down that the defendant
13 said, I licked her in the bedroom?

14 A. I did write it down on this note. You have to
15 specify the time frame.

16 Q. You wrote it down a few days ago, right?

17 A. Correct.

18 Q. I'm asking you whether you contemporaneously wrote
19 down, I licked her once in the bedroom. It was foolish,
20 something like that?

21 A. I never wrote that down.

22 Q. You never wrote that down?

23 A. Correct.

24 Q. You testified in September of 2014, saying that's
25 what he said to you?

1 A. Correct.

2 Q. That's based upon your own independent
3 recollection?

4 A. Yes.

5 Q. Even though you had trouble remembering before
6 something you testified to here, which was only nine months
7 after the hearing?

8 A. Correct.

9 Q. Was Officer Wiggan, was he in the same patrol car
10 you arrived in?

11 A. Yes.

12 Q. Was he with you when you went over to talk to
13 Mr. Ramos?

14 A. No.

15 Q. Did it ever occur to you to enter in your memo
16 book these statements that you say the defendant made
17 specifically, arrest me. She says, I raped her daughter and
18 I was foolish. I licked her once in the bedroom. Did it
19 ever occur to you to write that down in your memo book?

20 A. No.

21 Q. Now, you have testified that after Crystal said to
22 you out loud, in front of Mya, who was a few feet away from
23 her, that the defendant licked my daughter's coochie. You
24 say you went to talk to Mya after that, correct?

25 A. Yes.

1 Q. Now, isn't it correct that after you were told
2 that by Crystal Ramirez, you went directly to talk to the
3 defendant?

4 A. No.

5 Q. Didn't Crystal say to you that the defendant --
6 and she pointed to Mr. Ramos, licked her daughter's coochie?

7 A. Yes, she said that.

8 Q. So Crystal was pointing to the person who she said
9 did that?

10 A. Correct.

11 Q. Because he was in the parking lot?

12 A. Yes.

13 Q. Let me ask you if you made this answer to this
14 question back at that hearing. This was on direct
15 examination by Mr. Perri at page 9, line 12.

16 "QUESTION: Officer, after Crystal Ramirez
17 identified the defendant as the person who allegedly
18 licked her daughter's vagina, what, if anything, did
19 you do next?

20 "ANSWER: Went to speak to Daniel Ramos while
21 my partner stayed with Crystal."

22 A. That's correct.

23 Q. Didn't you testify to before you went to talk to
24 Mya and you asked Mya what happened, it took her a
25 minute-and-a-half to two minutes to tell you anything?

1 A. Yes.

2 Q. Which is it? Did you go to talk to Mya, or did
3 you go immediately to talk to the defendant?

4 A. I spoke to Crystal first, then I spoke to Mya,
5 then I spoke to Crystal again, and then I went over to the
6 defendant.

7 Q. And you spoke to Crystal again for what purpose?

8 A. To just say, was that him. She is pointing to
9 him.

10 Q. Didn't she tell you who it was before in her first
11 statement to you?

12 A. She did.

13 Q. But you went back to Crystal to make sure it was
14 Daniel Ramos standing there by his car?

15 A. Correct.

16 Q. Because you didn't believe her the first time?

17 MR. PERRI: Objection.

18 THE COURT: Sustained.

19 Q. And the purpose to going back?

20 MR. PERRI: Objection.

21 THE COURT: Overruled. You can answer.

22 A. The purpose was to make sure that was who she was
23 referring to.

24 Q. The first time you were not sure?

25 A. It's not that I wasn't sure, I just asked her

1 again.

2 Q. I asked you why you did that if you were sure the
3 first time, why did you ask her again?

4 A. I'm making sure that's the person she was talking
5 to.

6 Q. Did you have doubts the first time when she said
7 that?

8 A. No.

9 Q. But you went anyway?

10 A. Yes.

11 Q. Is there a parking lot near the house?

12 A. Yes.

13 Q. That's where the defendant was with his car?

14 A. Correct, well, with a car.

15 Q. I'm sorry.

16 A. I don't know if it's his car.

17 Q. With any car?

18 A. Correct.

19 Q. You said you were at the special victims squad for
20 nearly the entire time, you actually transported him to
21 headquarters, correct?

22 A. I didn't transport him to headquarters, no.

23 Q. You were with him until such time he was taken
24 from the special victims squad to headquarters?

25 A. Correct.

1 Q. And you said that you saw the defendant that was
2 seen by other people, Detective Baran, Detective Pacheco?

3 A. Correct.

4 Q. And were they in the room with him during this
5 time?

6 A. Not the entire time.

7 Q. Well, how much time was it that you saw the
8 defendant in this room?

9 A. The defendant?

10 Q. Yes.

11 A. He was in the room the entire night except for
12 when I took him to the bathroom.

13 Q. Give us a ballpark figure how much time that was.

14 A. He was in the room probably eight, nine hours.

15 Q. And during that time, how much time would you say
16 he was with Detective Baran and Detective Pacheco?

17 A. I'm not sure. I didn't have a clear sight of him
18 every time.

19 Q. Why were you outside this room?

20 A. I wasn't inside the room when --

21 Q. I said, outside?

22 A. Why was I outside? To watch him when he was
23 alone.

24 Q. So for the eight or nine hours he was not alone,
25 correct?

1 A. No, not the entire time.

2 Q. How much time was he, if you could tell us, how
3 much time was he with Detective Baran?

4 A. I'm not sure.

5 Q. Was it hours?

6 A. No, it was not hours.

7 Q. One hour?

8 A. Possibly. I wasn't the only one watching him the
9 entire time.

10 Q. Who else was watching him?

11 A. Officer Wiggan, my partner, Officer Wiggan.

12 Q. Between you and Officer Wiggan, you were watching
13 the defendant the entire time?

14 A. On and off, yes. And not when the detectives were
15 in there.

16 Q. And you saw Pacheco there as well, did you not?

17 A. I did.

18 Q. In the room with the defendant?

19 A. I did.

20 Q. Would you say that Pacheco was there more than
21 Detective Baran, equally or less?

22 A. I'm unsure how long he was in there for. I saw
23 him in the room. I didn't see him enter the room or exit
24 the room. I just saw him in the room. I wasn't watching
25 the entire time.

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1 Q. For the time you were watching, could you give us
2 a ball park figure how long Pacheco was in the room?

3 A. I'm unsure. I looked in the window and I saw him,
4 just like I see the people walking, and I walked away. I
5 don't know how long he was in there for.

6 THE COURT: Mr. Berger, find a good place to
7 break. You can keep going for a little bit.

8 MR. BERGER: I'm almost finished.

9 Q. Mr. Perri asked you whether or not any threats
10 were made to the defendant, correct?

11 A. Correct.

12 Q. Of course, if any threats were made by a police
13 officer, it could cause them to lose their job?

14 A. Of course.

15 Q. That's true of any police officer?

16 A. Sure.

17 MR. BERGER: Thank you, officer. I have
18 nothing further.

19 MR. PERRI: Very briefly, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. PERRI:

22 Q. Officer Boccio, on the date of the incident,
23 October 16, 2013, did you tell anyone else about the
24 statements that you heard the defendant make?

25 A. Yes.

1 Q. And did you tell the members of the special
2 victims squad?

3 A. Yes.

4 Q. And on that day, were those statements recorded?

5 MR. BERGER: Objection.

6 THE COURT: Overruled.

7 Q. On that day --

8 MR. BERGER: That he told. It's all hearsay.

9 THE COURT: Overruled. Please ask the next
10 question.

11 Q. Officer, were these statements that you gave,
12 about what the defendant said to you, were they recorded by
13 another member, written down by another member, typed by
14 another member of the Nassau County Police Department?

15 A. Yes, they were.

16 Q. Who was that?

17 A. Detective Baran.

18 MR. PERRI: Thank you, your Honor.

19 THE COURT: Recross on that limited area.

20 RECROSS-EXAMINATION

21 BY MR. BERGER:

22 Q. Did you see Detective Baran write it down?

23 A. I did not.

24 Q. You don't know if he wrote it down or not?

25 A. I do know he entered it into his notes.

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1 Q. You know what he may have told you, but you didn't
2 see him write it down?

3 A. I did not see him write it down personally.

4 Q. When you told him -- when you say you told him
5 this, did you see him write anything down at that point?

6 A. No.

7 MR. BERGER: Thank you. Nothing further.

8 THE COURT: Redirect.

9 MR. PERRI: Extremely limited, your Honor.

10 REDIRECT EXAMINATION

11 BY MR. PERRI:

12 Q. Did the statements that you heard the defendant
13 say, did they appear in a typed written document after you
14 told Detective Baran?

15 A. Yes, they did.

16 Q. What document is that?

17 MR. BERGER: Objection.

18 THE COURT: I'll take what the document is.

19 A. I'm not sure of the exact document name.

20 Q. Could you describe the document?

21 A. Police officers' testimonials, and it shows what
22 statements were made, what each officer did at the scene.
23 I'm not sure of the name of the form.

24 MR. PERRI: Thank you.

25 THE COURT: Recross on that.

1 RECROSS-EXAMINATION

2 BY MR. BERGER:

3 Q. You did not see, whoever you told it to, to write
4 it down, correct?

5 A. Correct.

6 Q. You had not even written it down in your memo book
7 or any piece of paper what was said, when it was said, when
8 you say it was said by Mr. Ramos, correct?

9 A. Correct.

10 MR. BERGER: Nothing further.

11 THE COURT: Thank you. Be careful stepping
12 down.

13 (Whereupon, the witness exited the
14 courtroom.)

15 THE COURT: This is a good time for us to
16 break for today. I'm going to ask that you all be here
17 tomorrow morning at 10:00 a.m. The beauty of 10:00
18 a.m., it's a little later for you. The bad news of
19 10:00 a.m., the parking will be difficult. React
20 accordingly, adjust accordingly. If you come earlier,
21 there will be a place for you. I don't expect you to
22 gather in the room until 10:00 a.m.

23 Keep an open mind throughout the trial. Do
24 not discuss the case amongst yourself or with anyone
25 else during the trial. Do not permit anyone to discuss

1 the case in your presence. Do not talk to the lawyer,
2 witness, the defendant. And remember, if you run into
3 any of us at any point, we'll ignore you. Please do
4 not take it personally.

5 Do not visit or view the place where the
6 charged crime was committed or any other place involved
7 in the case. If there is any news coverage of the
8 case, do not read, view, or listen for any accounts or
9 discussions of the case reported by the news media.

10 Do not attempt to research any fact, issue,
11 or law related to this case, whether by discussion with
12 others by research in the library or on the Internet,
13 or by any other means or source. Have a great evening.
14 See you all tomorrow morning.

15 (Whereupon, the jury exited the courtroom.)

16 THE COURT: Anything for the record,
17 Mr. Berger?

18 MR. BERGER: Yes, Judge. I tried to ask
19 Sincere, the young man, if he understood what an oath
20 meant, and what would happen if he didn't tell the
21 truth. He gave an answer at one point that he did not.
22 I mean, this person you allowed to swear under oath
23 doesn't even know what an oath is, and you say it's in
24 the record, and we'll worry about it at that point.

25 It seems to me you are preventing me from

1 properly cross-examining and discrediting a witness
2 here when he doesn't understand what an oath means.
3 His testimony shouldn't be accepted at all, yet you
4 protected him when he was on the witness stand. He may
5 have been upset. Why? We don't know exactly. If he
6 doesn't understand what an oath is and doesn't
7 understand what will happen if he doesn't tell the
8 truth, that's serious. He shouldn't be allowed to
9 testify. And the prosecution is going to ask you to
10 allow Mya to come in tomorrow and testify? My position
11 is she shouldn't be allowed to testify under oath and
12 shouldn't be allowed to testify at all. Look at what
13 we got from an eleven-year old here who could not
14 answer those questions?

15 THE COURT: I would have to beg to differ
16 with you, Mr. Berger. You asked him if he understood
17 what an oath meant. He said, it means I have to swear
18 to tell the truth. You asked him what would happen if
19 he didn't tell the truth. He said, you won't get out
20 of here as soon as possible. He very much understood
21 what an oath was.

22 MR. BERGER: That's an answer?

23 THE COURT: He very much understood exactly
24 what would happen if he didn't tell the truth because
25 he would keep being asked questions if he was not

1 telling the truth. That is the understanding of an
2 eleven-year old. He said on more than one occasion to
3 your questions that he was here to tell the truth.

4 You can continue to say I'm protecting the
5 world, Mr. Berger. My rulings are my rulings. If your
6 client should be found guilty, you have an appeal
7 process.

8 Anything else for the record?

9 MR. BERGER: The Court has to be a little bit
10 more mindful of being neutral in letting me
11 do the cross-examination that I should be doing.

12 THE COURT: Mr. Berger, I imagine if there
13 was a rape victim on the stand, you would want to
14 question her about the 27 boyfriends she had prior to
15 the rape. It's not allowed. It is not appropriate for
16 this kind of case. I am aware of that. I know you are
17 aware of that. I'm not going to allow you to go down a
18 road asking questions of these witnesses that have
19 absolutely nothing to do with their testimony here at
20 trial. There are ways to attack people's credibility.
21 You know what those ways are when it comes to cases of
22 this matter. I'm asking you to abide by those rules of
23 law.

24 MR. BERGER: I'm not making any challenge to
25 the rape shield law. I know what that is about.

1 That's not what this is about. This is about
2 challenging credibility of these witnesses. Asked and
3 answered, after I asked the question once? That's
4 letting me press a witness? That's not what
5 cross-examining under the constitution means.

6 THE COURT: If your client is convicted, you
7 have got, right now, if I'm counting, probably about
8 twelve things you think the Court had done wrong.
9 Maybe I have, maybe I haven't. On your appeal you can
10 certainly lay them out to the Appellate Division.

11 MR. BERGER: It's regrettable that's your
12 attitude. It seems to me --

13 THE COURT: Mr. Berger, you know why it's my
14 attitude? Every decision I make, you question. I am
15 not going to sit here and have you question everything
16 I make. You want to bring me a case that tells me I've
17 done it wrong, you want to show me a statute that I've
18 done it wrong, bring it. Until you do that, stop
19 questioning every decision I make.

20 MR. BERGER: That's a misstatement. I don't
21 question every decision you make. I question the ones
22 I disagree with. That's my function as a lawyer, to
23 disagree and point out the law to you.

24 Now, asked and answered, let's read
25 Richardson. It tells you --

1 THE COURT: Mr. Berger, enough. I'm not
2 going to sit here and have a lesson with you on asked
3 and answered. You asked the question. You didn't like
4 the answer. You got what you got. I don't have to
5 allow you to ask the question fifteen times. It's
6 within my discretion. You have this child on the
7 stand. You were allowed to ask this child whatever
8 question you wanted to that I felt were relevant and
9 proper. You got your answers to those questions.
10 Done. I don't have to sit here and allow you to
11 question a child-witness time and time and time again.
12 It's not required. You had your ability to press him.
13 You have your answers. You have how he reacted. You
14 have him say on more than one occasion, I don't know,
15 in addition to saying, swear to tell the truth. Use it
16 as you see fit. I don't have to allow the child to
17 stay on the stand ad nauseam for you to ask the
18 question over and over. If I do, I'm sure the
19 Appellate Division will let me know.

20 MR. BERGER: When I asked him about what it
21 means if he doesn't tell the truth, you were satisfied
22 with the answer that made no sense.

23 THE COURT: It made perfect sense.

24 MR. BERGER: He needs to get out of here
25 faster. That wouldn't mean that he wouldn't have to

1 answer anymore questions. That's what it means when
2 you don't tell the truth? I'm sorry, Judge, that's not
3 what it means, and that's not what any of these cases
4 show when you question a witness as to whether or not
5 he or she should get on the witness stand and testify.
6 You have to find out a lot more than that, than merely,
7 I'll get out of here faster. That's meaningless.
8 That's not an answer.

9 THE COURT: Are you done? Anything else for
10 the record?

11 MR. BERGER: No.

12 THE COURT: People, anything for the record?

13 MR. PERRI: No, your Honor.

14 THE COURT: All right, see you all tomorrow.
15 I need both of you at 9:30. We have to deal with the
16 child witness. I want the attorneys here at 9:30.

17 (Whereupon, the trial was adjourned to May
18 12, 2015.)

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COPY

730

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : CRIMINAL TERM PART 43
3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
5 : No. 742N/14
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8 : VOL. II
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7 May 12, 2015
8 262 Old Country Road
9 Mineola, New York

9 B E F O R E:

10 HONORABLE TERESA K. CORRIGAN,
11 Acting Supreme Court Justice

12 (Appearances remain the same.)

13 * * *

14
15 KAREN M. MASLER
16 Senior Court Reporter

17 * * *

18
19 THE CLERK: Case on trial continued,
20 Indictment Number 742N of 2014, People of the State of
21 New York vs. Daniel Ramos.

22 Let the record reflect all parties are
23 present, the jury is not present at this time.

24 Madam interpreter, can I have your appearance
25 for the record.

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1 THE INTERPRETER: Interpreter Carmen Knight,
2 K-N-I-G-H-T.

3 THE CLERK: People ready?

4 MR. PERRI: Yes, your Honor.

5 MR. BERGER: Yes, your Honor. I have an
6 application, if I may, Judge.

7 THE COURT: Sure.

8 MR. BERGER: I'm making a motion for a
9 mistrial in this case based upon what I believe is the
10 Court's bias against me and/or my client. It seems
11 that the Court is hellbent on having the Second
12 Department see this case and review the record, and I
13 must put on the record now a few things that are not
14 contained on the record.

15 At the end of the Court's day yesterday, the
16 Court felt it necessary to yell at me and make what I
17 thought was a silly comment about my ignoring the rape
18 shield law, but if I could ignore the rape shield law,
19 I would do it in this case. That is not applicable. I
20 never said this case is about the rape shield law. Why
21 it was necessary for you to yell -- I don't conduct
22 myself that way with the Court, and yet the record
23 won't reflect you kind of losing it and making a
24 comment about me ignoring the rape shield law.

25 Secondly, setting forth an argument as to why

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1 I thought it should be appropriate for me to ask
2 Crystal Ramirez if she and her children watch
3 pornography at home. I made a representation to the
4 Court, in a good faith basis, I had information that
5 led me to believe that, in fact, they did in fact watch
6 pornography in the house, that she did with her
7 children. And the Court's comment to me was, where did
8 you get that from, the defendant, in a sarcastic tone.
9 The sarcastic tone is not reflected on the record, but
10 I'm pointing that out now. The sarcastic tone suggests
11 to me you are not going to believe anything the
12 defendant has to say, because how could that -- how
13 could I believe that? How could we believe that? He's
14 a defendant charged with a sex crime here. The fact of
15 the matter is, the defendant has no record. Crystal
16 Ramirez, if you accept what she told to Mr. Perri, she
17 has stolen property out of a car, was engaged in a
18 robbery, second degree, although she pled guilty to
19 attempted petit larceny and got youthful offender. If
20 there is anybody who seemed to have credibility, it
21 would be the defendant, and yet the Court's skepticism
22 about did I get that information from the defendant, as
23 if he couldn't possibly tell the truth.

24 And then, Judge, I asked the Court for a
25 subpoena to the South Shore Child Guidance Center

1 because I had known, and it was admitted on the record,
2 that Mr. Ramirez and her two children went there for
3 therapy. You were not going to let me get into the
4 therapy issue. I pointed out on the record yesterday
5 the therapy wasn't the issue, but watching the
6 pornography was the issue. And yet, only when I made
7 the suggestion that you take a look at the records in
8 camera to view whether or not anything contained in the
9 records would be beneficial to the defense, you then
10 accepted that because, after all, who is going to
11 challenge whatever your findings will be when you read
12 it? I personally have no confidence that even if there
13 was something in those records that would be helpful to
14 the defense, you would make it available to me because
15 I think your view point is somewhat skewed against the
16 defense in this case.

17 And then, in addition, I provided your law
18 secretary with a subpoena to the police department in
19 which I asked for the protocol and procedures with
20 respect to interviewing children in alleged sex offense
21 cases. The protocols are important because if they're
22 not followed, then it becomes a question of whether the
23 police did their job properly in this case, and we know
24 that there are protocols that are required in these
25 cases.

1 We also know that the police didn't
2 interview -- didn't interview the complainant. I can
3 assume that because there are no Rosario materials
4 turned over to me. And one of the police protocol, I
5 know if they interview a witness, they take a statement
6 or make notes about the interview. I received no
7 Rosario material, which I think is rather remarkable in
8 this case that this young girl hasn't been interviewed.

9 And so, I think I'm entitled to the protocol
10 and without explanation, without acting in a lawyerlike
11 fashion, all I know from your law secretary was, you
12 will not sign the subpoena which had to be so ordered
13 and required your signature.

14 So, I mean, you have done everything to
15 stifle me in this case, in my perspective, and I find
16 it rather sad that a case of this importance, your
17 instincts are contrary to what I consider to be the
18 actions of a neutral judge in a case. I've been trying
19 cases for nearly fifty years; forty-three plus years
20 with the Legal Aid Society. I know instinctively when
21 I'm getting a fair shot from a judge. Sometimes I do
22 and sometimes I don't. Your instincts are contrary to
23 what I consider a neutral position.

24 When we came up yesterday and I wanted to try
25 to show -- play the 911 tape for Ms. Ramirez, your

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1 instincts were not to allow it to happen.

2 THE COURT: Not in an open courtroom. Not in
3 front of a jury.

4 MR. BERGER: I had to give you an explanation
5 as to why she should hear it. The district attorney,
6 they end up playing 911 calls every time. This was the
7 first time I can remember -- I'm not saying it hasn't
8 happened, but this is the first time I can remember a
9 prosecutor not wanting to put in a 911 call, but he
10 didn't do it this time, and here I wanted to do it. I
11 pointed out, how about refreshing your recollection as
12 to what she said, and ultimately, you did. But
13 instinctively, I couldn't ask any questions about
14 whether Crystal Ramirez had ever seen pornography. And
15 the fact I asked a question as to how it is that her
16 daughter could use the term eat her coochie, how a
17 six-year old knows of that, it becomes important in
18 this case.

19 You instinctively are protecting the
20 complainant, and a mother in this case. It's nothing
21 that necessarily will appear, although, I think there
22 are some flagrant things on the record already, but
23 there are things that I know instinctively, as a trial
24 attorney, and all of the cases I tried as to whether or
25 not the judge is being neutral in the case. I don't

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1 think you are. You may think you are, and I
2 understand, I don't attribute any bad motives to you,
3 but you may think you are, but you are not. You are
4 still, from my perspective, have a prosecutor's bent
5 here to protect the complainant, or the whole
6 complainant's case, the mother, the brother. I mean, I
7 don't think it's fair to the defendant and that's what
8 is really important to you. And the important thing is
9 to make sure this defendant gets a fair trial. I don't
10 think you are doing it. I'm hoping that you will
11 engage in some self-examination and make the
12 determination that you know, maybe, I am not looking at
13 it in a neutral position. But if you are not, Judge, I
14 think at this time a mistrial is appropriate, or at the
15 very least, you should recuse yourself and have
16 somebody else come in and sit for the rest of this
17 case.

18 THE COURT: All right. Thank you.

19 People, would you like to be heard?

20 MR. PERRI: The People oppose the application
21 and don't find any basis in the record to support it.

22 THE COURT: With regards to the application
23 for a mistrial, the Court is denying that application.
24 The Court will note that with regards to signing
25 subpoenas. The Court doesn't have to actually give an

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1 educational reason as to why something is or is not
2 signed for, rather the Court needs to follow the law
3 and that's what this Court is doing with regards to the
4 signing of subpoenas.

5 With regards to the records that were
6 received by the Court this morning from the counseling
7 center, I have reviewed the first set of records which
8 are the records of Mya Ramirez Feliciano, and I am
9 handing to the attorneys one page each from those
10 records that the Court found directly relevant to this
11 case.

12 At this time, there was nothing else within
13 those records that the Court determined to be relevant
14 in that there was nothing within those records that
15 showed the Court that Mya Ramirez Feliciano has any
16 difficulty distinguishing between reality and fantasy,
17 nor does she have any difficulty understanding truth
18 telling or what happens when there is no truth telling.
19 Everything else within those records is completely
20 confidential and as put forth by the People yesterday.

21 The Court will share only this about the
22 record. The basis, the therapy is not what was put
23 forth yesterday by Mr. Berger when he made his initial
24 argument, which was that the children were in therapy
25 because they watched pornography with their mother. In

1 fact, the children are in therapy based on a history of
2 domestic violence within the family and some
3 disciplinary issues or behavioral issues that have
4 happened to the children, some of which were due to
5 issues at the time of birth.

6 So, I've turned over the page that is
7 relevant. Like I said, I did get through Mya's
8 records. I've not yet gotten through Sincere's
9 records. If, after going through Sincere's records,
10 there is something in there that needs to be disclosed,
11 and if the two of you advise me it has impact on either
12 your direct or cross-examination of him, I certainly
13 will allow either one of you to call him again to the
14 stand, should that be legally proper to do.

15 MR. BERGER: The record should reflect what
16 you turned over to me is a page subsequent to the
17 alleged incident here. My position was that these
18 children were being taken to therapy by the defendant
19 prior to that time. And the fact that you say to -- on
20 the record that there is a domestic violence history
21 there, but that nothing else is relevant to the point
22 that I was making, I mean, we have to rely on your
23 viewing that.

24 In addition, to the fact that the
25 defendant -- I mean, the prosecutor brought out the

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1 fact there was a change in her behavior subsequent to
2 this alleged incident and we want to show that in fact
3 whatever trouble behavior she had, if she did, was as a
4 result of -- prior to this incident, having nothing to
5 do with this incident. But you stopped me there.

6 Now, when the Court says to me, that they're
7 not going to give me an explanation for why it's
8 refusing a subpoena, that's not really how the lawyers
9 should work. You can say, I don't have to give you an
10 explanation. I don't have to tell you why I'm not
11 signing the subpoena. I suppose from a purely legal
12 point of view, maybe you are right, but it seems to me
13 if you really are interested in obtaining justice here,
14 you have to be able to say to me my request is totally
15 irrelevant and let's talk about the law, that knowing
16 the protocol for the police department with respect to
17 interviewing alleged victims of sex cases, is not a
18 relevant factor in this trial. Seriously, are you
19 taking that position, just to hide behind the fact I'm
20 the judge, and I don't have to give you any
21 explanation? That's not really how County Court should
22 work.

23 THE COURT: Counselor, you had every
24 opportunity to provide me with caselaw along with your
25 application and a request for subpoena. Many attorneys

1 have done that. You have not provided me with anything
2 that shows me why it would be legally proper, but
3 that's the only thing I'm determining, why it would be
4 legally proper for you to get protocol of a process
5 within the police department that may or may not exist.

6 I have actually read numerous cases with
7 regards to when the Court needs to sign subpoenas, and
8 there is not a single case that requires that the Court
9 sign off on every subpoena just because it is simply
10 asked for. In fact, that which you have sought, if you
11 look at cases such as Gissendanner 48 NY2d, 543, a
12 Court of Appeals case from 1979. In fact, that does
13 give the Court great guidance when it should or should
14 not sign subpoenas related to the police department and
15 records contained therein. And, in fact, that is the
16 case that gives this Court guidance in denying your
17 request for that subpoena to be signed off on and
18 issued. If you can find a case that tells me
19 Gissendanner should not be followed, I'll be more than
20 happy to read and look at it, and, of course, I would
21 change my position if that was legally required and
22 proper, but until that time occurs, my decision is my
23 decision, based on the legalities of this state as I
24 understand them. Of course, I could be mistaken. It
25 is your right and privilege to point that out to me in

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1 an application to renew and reargue, and I will gladly
2 await that application from you.

3 Anything else for the record?

4 MR. BERGER: Judge, not every situation has a
5 case on point. I mean, you have to be in the system to
6 know that you want me to find you a case that says you
7 must turn over the police protocol in an alleged sex?
8 First of all, I don't know that it ever got to that
9 point. The law is not an --

10 THE COURT: I'm sorry to interrupt you. I
11 really am. Let me just ask you this: You have advised
12 me you have been trying cases for forty-three years
13 here in Nassau County with the Legal Aid Society. How
14 many years have you been trying sexual offenses? Has
15 it been most of those forty-three years?

16 MR. BERGER: Probably.

17 THE COURT: I imagine you tried other cases
18 where the victims were children?

19 MR. BERGER: Probably.

20 THE COURT: How many of those cases received
21 the protocol from Nassau County via subpoena?

22 MR. BERGER: The protocol?

23 THE COURT: Just answer my question,
24 counselor. How many times have you received protocol
25 via subpoena from the Nassau County Police Department

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1 in those other cases in which a child was the victim of
2 a sex crime?

3 MR. BERGER: Not once.

4 THE COURT: Thank you. Go ahead. You may
5 continue.

6 MR. BERGER: That's not an answer, because
7 every case is different, and the protocol developed
8 starting with the case -- the McMartin case out in
9 California, all of a sudden the state started to
10 realize the way you question children becomes extremely
11 important in these cases and here you don't think it's
12 unusual they didn't question this child at all? No
13 Rosario material, nothing. And now the child will come
14 in and say whatever she has to say, if you allow her to
15 testify. I mean, really. You are not -- I'm not going
16 to be able to provide you with a case in the Second
17 Department or Appellate Department or Court of Appeals,
18 says, oh, you didn't turn over the protocol from the
19 police department. I doubt that has ever come up in a
20 situation.

21 THE COURT: It must be something it could be
22 compared to, counselor. It deals with what police
23 didn't record throughout the entire decision, so I
24 obviously, I don't need something that says protocol.
25 I have a case that talks about the records and what is

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1 contained within the police department. That's what
2 I'm following. I'm sure there must be something out
3 there. I might be missing it. I'll be more than happy
4 to read it.

5 MR. BERGER: I'm not asking for specific
6 records or specific cases. I'm asking for the general
7 protocol. They have a victim's unit now, okay? They
8 are now videotaping children in their interviews. I
9 know they are providing officers who are supposed to be
10 trained and skilled in interviewing children in a
11 neutral unbiased way. Now, we see this going on. I'm
12 asking for a general rule about the protocol, for
13 example, the protocol when the police interview people,
14 when they're supposed to take a statement. They're
15 supposed to have them sign it. There are rules and
16 police regulations that defense counsel should be able
17 to use to show that they did not engage in those
18 protocols because as, your Honor knows, the absence of
19 proof by the prosecution can create reasonable doubt.
20 They didn't do what they were supposed to do, and if
21 you don't think that my knowing the protocol so I could
22 point that out when cross-examining witnesses, if you
23 don't think that is important -- this is the bias that
24 I'm talking about, Judge.

25 THE COURT: I never said you couldn't

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1 question a witness about it, counselor. I simply said
2 I wasn't signing the subpoena.

3 MR. BERGER: I understand that. It seems to
4 me if you give me the subpoena, I'm asking questions
5 from a much more knowledgeable point of view instead of
6 having to do it by instinct. This is what I'm talking
7 about, about the bias, your instincts are for the
8 prosecution to protect the police, to protect the
9 witnesses. It's something you know when you try cases.
10 It's something you know, and for you to ask me how many
11 cases I ever asked police protocol, that ends the
12 issue.

13 THE COURT: It doesn't end the issue because
14 I was curious and then there would have been a judge
15 that I could have called and said, please explain to me
16 how it is you handled this issue, and this matter, but
17 you are telling me it never occurred. Again, I did
18 research. I don't have a case on point, and now I
19 don't have another judge I can call. You have been
20 doing this for forty-three years. It's no secret.
21 I've been on the bench since 2012. It is no secret to
22 anybody. It is no secret to anybody that I came from
23 the prosecutor's office. But what is also not a secret
24 to anybody, I'm not afraid to call people and say, how
25 do you do this? I'm not afraid to pick up a book and

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1 do a little research. I want to get it right. At the
2 end of the day, someone at your level of experience, I
3 was seeking some guidance to see if there was some
4 other judge that you may have dealt with that had this
5 issue that could have guided me. That's the only
6 reason I asked the question.

7 Is there anything else, counsel, before we
8 get started? I have a jury waiting.

9 MR. BERGER: There are certainly more
10 important things than worrying about whether the jury
11 is waiting or not. This is an important motion.

12 THE COURT: We have gone over it now,
13 yesterday, for quite some time. Today we have now been
14 talking about it for quite some time. At the end of
15 the day, here's the problem, if you don't like my
16 decision, you want to keep talking and you want to keep
17 arguing. You don't have to like my decision. Your
18 record is made. I know you don't like the decision. I
19 appreciate it and understand that you disagree with the
20 decision. Not like it, or don't like it, you legally
21 disagree with it. You feel the Court made a legal
22 error. I understand that. I get it. That's my
23 decision, and all of the talking in the world right now
24 is not going to change it. I would like to move
25 forward with this trial.

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1 MR. BERGER: Judge, there are certain things
2 that I know instinctively. You must know instinctively
3 that to give me the protocol is something counsel
4 should have, just like if the prosecution asked for
5 protocol if that indeed was important. You would do
6 it. It seems to me you instinctively know that I
7 should know what the protocols are, and if they are not
8 in accordance with what I believe them to be, fine,
9 then I can't use them, but not to give them to me? Who
10 is being harmed? The police department, by providing
11 you protocols? To hide behind the fact you don't have
12 a case is silly, in my view. What you should do is
13 take a look and say, you know what, nobody is being
14 harmed, issue a subpoena. I'm sure they have it
15 written down somewhere. Just provide it to defense
16 counsel.

17 THE COURT: All right, thank you.

18 People, do you want to be heard again?

19 MR. PERRI: There's one other item but it is
20 not related to this.

21 THE COURT: Go ahead.

22 MR. PERRI: This morning in preparing the
23 second witness, the People intend to call the nurse
24 examiner, Kathleen McAllister from Nassau County
25 Medical Center. Although, we turned entirety of her

1 notes, and she made know making any physical findings
2 with respect to the child she did disclose, as was
3 reflected in the medical records notes she did take
4 photographs of the child while she examined her. The
5 People have no intention to place the photographs into
6 evidence. They were noted in the medical records to
7 existed at the hospital, did not turn those photographs
8 over to the People pursuant to the subpoena that we
9 have.

10 If the Court and defense counsel wish, I can
11 attempt Nurse McAllister to obtain them today, but the
12 People are not looking to introduce them. There are no
13 physical findings such as perforation that normally a
14 photograph or any injuries that the People are alleging
15 there are any injuries internal or external to the
16 child that would possibly be reflected in those
17 photographs.

18 MR. BERGER: I'm not interested in the
19 photographs. I just want to be clear that I've been
20 provided with new health documents and is this the
21 document that Nurse McAllister is going to be
22 testifying to?

23 MR. PERRI: The certified copy of the medical
24 records that were obtained by the People were turned
25 over in the Rosario materials. The People previously

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1 turned over to defense counsel the sexual assault
2 nurse, the sexual assault examination medical records
3 that the People had and once we had obtained a
4 certified copy which does contain additional documents
5 we did turn them over in their entirety to the defense,
6 your Honor.

7 THE COURT: What Mr. Berger is discussing now
8 was previously turned over or turned over today.

9 MR. PERRI: Yes, that certified copy, the
10 medical records was turned over in its entirety as part
11 of Rosario materials.

12 MR. BERGER: That was yesterday.

13 MR. PERRI: Your Honor, those materials were
14 turned over with the Rosario packet. A second
15 subsequent copy was provided to defense counsel
16 yesterday. A copy was faxed to him when he stated he
17 did not have his copy. As soon as he called, it was
18 faxed over. I offered to have additional copies
19 provided that day that he requested it at the DA's
20 office prepared to help him. He told me on the phone
21 not to do that and bring it to him in court on Monday.
22 The sexual assault nurse examiner exam papers were
23 previously provided prior to the hearing in this case
24 and were turned over to defense counsel.

25 MR. BERGER: Mr. Perri is referring to two

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1 separate documents. I'm only aware of one, or at least
2 he could explain what the second one is so we can talk
3 about it.

4 THE COURT: You need some time to go over
5 your materials before we get started today, I will give
6 you that time.

7 MR. BERGER: I want to know, other than what
8 was turned over yesterday, new health and was faxed to
9 me on Friday, what other document is he referring to in
10 the Rosario material?

11 MR. PERRI: The defense.

12 THE COURT: Is it medical records?

13 MR. PERRI: Yes, the sexual assault.

14 MR. BERGER: Give the number of the page.

15 MR. PERRI: Page 112, page 106. Letter HH
16 medical records offer Mya Ramirez and these records
17 were turned over at the hearing as well, your Honor.

18 THE COURT: Can we take care of the young
19 witness to see if she will be swearable title.

20 MR. PERRI: No, we did intend to call her
21 first. She's been waiting a long time in the hallway.
22 Can I check?

23 (Whereupon, a short recess was taken.)

24 THE CLERK: Indictment Number 742N of 2014,
25 People of the State of New York vs. Daniel Ramos.

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1 All parties are present and the jury is not
2 present at this time.

3 People ready?

4 MR. PERRI: Yes, your Honor.

5 THE CLERK: Defense counsel ready?

6 MR. BERGER: Yes.

7 THE COURT: At this point we need to conduct
8 a swearability hearing with respect to the next
9 witness, Mya Feliciano Ramirez.

10 MR. PERRI: I believe the child's name is
11 Mya Feliciano Ramirez.

12 THE COURT: She is outside.

13 MR. PERRI: Yes, she is.

14 THE COURT: Can you say your name for me?

15 THE WITNESS: Mya.

16 THE COURT: Last name.

17 THE WITNESS: Feliciano Ramirez.

18 THE COURT: Ms. Ramirez, my name is Teresa
19 Corrigan. I'm going to be the Judge today in this
20 case, alright?

21 THE WITNESS: Okay.

22 THE COURT: Do you know why you are here
23 today?

24 THE WITNESS: Yes, because Danny.

25 THE COURT: Because of Danny.

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1 When you come in later on, if you come in,
2 there's going to be a whole bunch of people sitting in
3 those chairs over there. The clerk, the woman who
4 spoke to you, she will ask you to raise your hand and
5 to take an oath, to swear to the truth; do you know
6 what that means?

7 THE COURT: What does it mean to have to tell
8 the truth? What does it mean to tell the truth? Talk
9 into the microphone.

10 THE WITNESS: You have to tell the truth.

11 THE COURT: What happens if you don't tell
12 the truth?

13 THE WITNESS: You lie.

14 THE COURT: What happens if you lie when you
15 promise to tell the truth?

16 THE WITNESS: If you lie, you get punished.

17 THE COURT: What kind of -- withdrawn. If I
18 said to you I was wearing -- see what I'm wearing here.
19 If I said to you this was purple, would that be the
20 truth or a lie?

21 THE WITNESS: A lie.

22 THE COURT: Why is that a lie?

23 THE WITNESS: Because you are not wearing
24 purple, you are wearing black.

25 THE COURT: And you promised to tell the

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1 truth at a time when it's really important to tell the
2 truth and you don't, do you realize that the Court can
3 get you in trouble too, the Court can find that you did
4 something wrong; do you understand that?

5 You have to say yes or no to that.

6 THE WITNESS: Yes.

7 THE COURT: What happens at home when you
8 don't tell the truth?

9 THE WITNESS: That means you are lying.

10 THE COURT: What happens if you lie at home?

11 THE WITNESS: You get punished.

12 THE COURT: What kind of punishment?

13 THE WITNESS: A lie punish.

14 THE COURT: Lie punishment; do you get a time
15 out?

16 THE WITNESS: Yes.

17 THE COURT: Do you have things taken away
18 from you, like your toys?

19 THE WITNESS: Yes.

20 THE COURT: How old are you, Mya?

21 THE WITNESS: Seven.

22 THE COURT: Are you in school?

23 THE WITNESS: Yes.

24 THE COURT: What grade are you in?

25 THE WITNESS: Second grade.

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1 THE COURT: Mya, did you celebrate Easter
2 this year?

3 THE WITNESS: No.

4 THE COURT: Did you celebrate Christmas that
5 passed?

6 THE WITNESS: Yes.

7 THE COURT: What did you do for Christmas?

8 THE WITNESS: Just dance around.

9 THE COURT: Danced around?

10 THE WITNESS: Yes.

11 THE COURT: Did you have any friends or
12 family over for Christmas?

13 THE WITNESS: Only a little bit of friends.

14 THE COURT: A little bit of friends?

15 THE WITNESS: Nodding.

16 THE COURT: Mya, what do you like to do when
17 you are not in school?

18 THE WITNESS: Go to the park.

19 THE COURT: Does anybody go to the park with
20 you?

21 THE WITNESS: My brother.

22 THE COURT: Mya, you heard me say the word --
23 can you tell the Court what does it mean to take an
24 oath in this courtroom? Do you understand what that
25 means?

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1 THE WITNESS: I don't.

2 THE COURT: Do you know that word?

3 THE WITNESS: Oath?

4 THE COURT: You don't know the word oath?

5 PROSPECTIVE JUROR: No.

6 THE COURT: What does it mean to tell the
7 truth, can you tell me one more time?

8 THE WITNESS: You raise your hand and that
9 means you are telling the truth.

10 THE COURT: Telling the truth about what,
11 something that happened?

12 THE WITNESS: Yes.

13 THE COURT: And Mya, if I said to you, let me
14 ask you, Mya, what color is that stuffed animal that is
15 with you today?

16 THE WITNESS: Blue.

17 THE COURT: If I said to you, no, I think
18 it's green, what does that mean if I say it's green?

19 THE WITNESS: That is a lie.

20 THE COURT: That I'm lying.

21 Thank you. Stay there one minute.

22 Off the record.

23 (Whereupon, there was an off-the-record
24 discussion.)

25 THE COURT: Mr. Berger, any other area you

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1 want me to cover?

2 MR. BERGER: Yes. I want you to ask her
3 whether or not she talked about this with Mr. Perri
4 before. Did they give her answers or her mother or
5 anybody else.

6 THE COURT: That doesn't go to her being able
7 to be sworn. That is something you can cross-examine.
8 That doesn't go to whether or not --

9 MR. BERGER: You fed her answers here.
10 Anybody, any child you can program to say you tell a
11 lie. That's bad. You are supposed to tell the truth.
12 If you raise your hand, it means you are telling the
13 truth. That is not true. I don't think she knows --
14 doesn't --

15 THE COURT: She doesn't know what --
16 understand what the word oath means, but she certainly
17 knew the difference between the truth and a lie and
18 what happens if you tell a lie. Just because you are
19 swearable doesn't mean you will be found credible.
20 There is swearable and credible. I feel the jury will
21 have to make the determination on credibility, not
22 swearability.

23 MR. BERGER: Let's take a look at what
24 happened in this courtroom.

25 THE COURT: One minute. Mr. Perri.

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1 MR. PERRI: Your Honor, in guiding the Court,
2 People vs. Mendoza, a Second Department case that the
3 standard articulated the examination of the child
4 revealed that she knew the difference between telling
5 the truth and lie. Promise to tell the truth indicated
6 she would be punished by the family by God. The Second
7 Department found that enough for the child to be found
8 swearable and did not find the Court abused its
9 discretion in finding the child swearable. It's not
10 required that she know.

11 THE COURT: Back on the record with the
12 Court.

13 Mya, what will happen if you tell a lie in
14 this courtroom today?

15 THE WITNESS: You will be taken away.

16 THE COURT: Will you be taken away?

17 THE WITNESS: No.

18 THE COURT: What did you just say? I didn't
19 here what you said.

20 THE WITNESS: You will be taken away.

21 THE COURT: You are telling me that's not
22 going to happen to you?

23 THE WITNESS: No.

24 THE COURT: Step up. Off the record.

25 (Whereupon, there was a discussion held off

1 the record.)

2 THE COURT: Based on the answers that I have
3 been given, although, I find the witness probably a
4 little younger than her years developmentally, she was
5 able to articulate the difference between the truth and
6 a lie. She was able to advise the Court as to what
7 would happen to her if she told a lie. I did a couple
8 of examples of what could be a lie. She was able to
9 identify both.

10 Again, I think this is going to be a question
11 of credibility vs. swearability.

12 Mr. Berger, you will be allowed to ask
13 questions regarding credibility and those questions you
14 ask this Court to ask of her are certainly proper and
15 appropriate for cross-examination, but the question of
16 swearability lies with the Court, and I'm going to find
17 that the witness is swearable at this time.

18 Again, although, I do find she is younger
19 than her years.

20 MR. BERGER: The statute says age nine,
21 Judge. Even yesterday, when Sincere testified, his
22 demeanor was so poor as a witness that even he
23 shouldn't have been allowed to have been sworn.

24 THE COURT: That's not how it will work under
25 the law, Mr. Berger, because the Court tells us in

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1 criminal cases, unless you bring -- unless something is
2 brought to the Court's attention that shows somebody
3 has an inability to understand the difference between
4 the truth and a lie at the age of nine, they are
5 swearable. That doesn't mean that they're credible.
6 There's a difference between swearability and
7 credibility, and the argument isn't for the jury that
8 they are not swearable. The argument is whether or not
9 they could be found credible.

10 At this point I find the child swearable and
11 it will be up to the attorneys to make the arguments to
12 the jury as to whether or not they're credible. Again,
13 there being a distinction in the law.

14 MR. BERGER: There's a reason why the
15 legislature said age nine. I would say to the Court if
16 you had somebody with a 70 IQ, and they were an adult,
17 they probably shouldn't be sworn either because there's
18 a limit. You are telling me, this girl --

19 MR. PERRI: The argument is going to
20 continue. I ask the child to be excused to the
21 hallway.

22 THE COURT: I appreciate that you disagree
23 with my decision, Mr. Berger, and I'm going to note
24 your exception for the record so the record is
25 protected. That is my decision at this time. That is

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1 where we're going to head. Why don't we have the young
2 lady step out.

3 Bring in the jury unless both sides agree to
4 leave her sitting here. I leave that up to the two of
5 you. The Court, it doesn't matter.

6 MR. PERRI: She can step outside. That's
7 fine.

8 MR. BERGER: I say, for the record, the
9 answers were purely rehearsed. You take the case
10 Mr. Perri cited and can teach a seven-year old or
11 five-year old to give answers to those questions.

12 THE COURT: Which you will test her
13 credibility and not her swearability.

14 MR. PERRI: Like the child for the five-year
15 old in Mendoza.

16 MR. BERGER: Before she gets called in, I
17 have something else to put on the record based upon the
18 documents you provided me here with today.

19 THE COURT: Let's have the young lady step
20 out. We'll call you back in a few minutes.

21 (Whereupon, Mya Feliciano Ramirez exited the
22 courtroom.)

23 THE COURT: Yes, Mr. Berger.

24 MR. BERGER: You have just ruled that this
25 seven-year old, notwithstanding the appearance that she

1 appears younger is going to be allowed to take an oath
2 and testify. I would like to point out to the Court
3 that Mr. Perri, in making a Molineaux application, made
4 a representation to the Court that this girl claimed
5 that this incident happened once before, approximately
6 two months earlier and you denied that application as
7 you know our defense in this case is that this never
8 happened and that this girl is not credible. The
9 documents you just provided to me, which is dated
10 October 21, 2013, has this girl saying to the therapist
11 that it happened five times before.

12 Now, if this doesn't raise questions in your
13 mind as to the appropriateness of having this, she
14 shouldn't be allowed to testify in my position. We
15 already know that Mr. Perri represented something to
16 the Court we now know is not true, at least from the
17 words of Mya. She has made up either to Mr. Perri,
18 that it happened once before, or she made up to the
19 therapist that it happened five times before, and we
20 are seriously going to allow this girl to be sworn and
21 give testimony in this case? Judge, if this doesn't
22 raise flags in your mind, nothing will.

23 THE COURT: All right. As I stated at the
24 bench, there is a difference between swearability and
25 credibility. Mr. Berger, you are free to cross-examine

1 this child about the one time before, five times
2 before, no times before, as you see fit. The Court
3 simply handed that document over because it was
4 relevant to this case. The Court is not the trier of
5 facts. I'm not going to speculate as to what it means
6 that this child has revealed to the therapist that this
7 behavior has occurred five times prior, but only
8 revealed to the assistant district attorney that it
9 occurred one time prior. You will have a fair
10 cross-examination, if you choose, to go down that road.

11 That's my ruling with regards to this matter.
12 The child will be allowed to testify and be sworn. She
13 is a child. Credibility versus swearability are very
14 different things.

15 MR. BERGER: Why did the legislature say the
16 age of nine is where you could swear somebody and this
17 girl is seven?

18 THE COURT: You will have to ask the
19 legislature.

20 MR. BERGER: I thought we were following the
21 law.

22 THE COURT: I am. I followed the bench book
23 for trial Judges, 2014 Edition. All the /TOERBGS
24 /TKWREGS as Supreme Court of the State of New York,
25 Section 6.2 under witness's testimonial capacity. The

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1 case law is in there if anybody needs to see it. Thank
2 you. Are we ready for the jury?

3 MR. PERRI: Yes, your Honor.

4 THE COURT: Ready for the jury, Mr. Berger?

5 We have some notes. We received two notes
6 from the jury. The first note has been marked Court
7 Exhibit V.

8 It reads as follows: I suffer from panic
9 attacks, totally under control, but I have issues of
10 not being able to get out. I'm far in, in regards to
11 seating. I'm just asking to move to an end by the
12 door. Thanks for your consideration, and that is
13 signed by juror number nine.

14 The second note, which is Court Exhibit VI
15 reads as follows: Trying to schedule an appointment
16 for shoulder evalve, W slash ortho, May 19th, 12:45,
17 dot, dot, dot. Can we work in a lunch break close to
18 that time, or would it cause issues and that is signed.
19 The juror gave his name, juror number four.

20 So with regards to juror number nine, who
21 would like to move to the end of the row? Mr. Berger,
22 I'll hear you with regard to that request.

23 MR. BERGER: No objection.

24 MR. PERRI: No objection.

25 THE COURT: We'll move juror number nine to

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1 seat fourteen, and shift everybody else down one with
2 the understanding that the person sitting in seat
3 fourteen and will remain juror number nine.

4 With regard to the medical appointment for
5 the 19th, it will be my intention at one of the breaks
6 this morning to remind the jurors that we are not
7 working on either the 18th or the 22nd of that week.
8 Additionally, we're not working the 15th of this week,
9 and to see if potentially that juror can make an
10 appointment on one of those days. If not, the jury
11 should write another note and then we'll deal with it
12 if there is no other appointments that can be made.

13 Acceptable, Mr. Berger?

14 MR. BERGER: Yes.

15 THE COURT: People?

16 MR. PERRI: Yes, your Honor.

17 THE COURT: Anything else before we call in
18 the jury?

19 MR. BERGER: I note it's a little late.
20 Would the Court allow me to question Mya with respect
21 to her ability to be sworn?

22 THE COURT: The law does not allow for that.
23 I will not. Like I said at the bench, any questions
24 regarding credibility are fair game.

25 (Whereupon, the jury entered the courtroom.)

M. Ramirez - People - Direct

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1 THE CLERK: Both sides stipulate all sworn
2 jurors are present and the seating has been changed.
3 Juror number nine is now at the end and all of the
4 other jurors have been moved over one seat, agreed?

5 MR. PERRI: Yes, your Honor.

6 MR. BERGER: Yes.

7 THE COURT: Good morning. Welcome back.
8 We're getting started a little late.

9 Call your next witness.

10 MR. PERRI: The People call Mya Feliciano
11 Ramirez.

12 May I step outside?

13 THE COURT: You may.

14 M Y A F E L I C I A N O R A M I R E Z, called on behalf
15 of the People, having been duly sworn, took the witness
16 stand and testified as follows:

17 THE CLERK: State your name for the record.

18 THE WITNESS: Mya.

19 THE CLERK: Your last name?

20 THE WITNESS: Feliciano Ramirez.

21 THE COURT: You may inquire.

22 DIRECT EXAMINATION BY

23 MR. PERRI:

24 Q. Good morning, Mya.

25 A. Good morning, Mr. Perri.

M. Ramirez - People - Direct

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- 1 Q. How old are you?
- 2 A. Seven.
- 3 Q. When is your birthday?
- 4 A. June 1st.
- 5 Q. Who do you live with?
- 6 A. Mom and my brother.
- 7 Q. What is your mother's name?
- 8 A. Crystal.
- 9 Q. What is your brother's name?
- 10 A. Sincere.
- 11 Q. Where do you live?
- 12 A. Roosevelt.
- 13 Q. Now, how old is your brother?
- 14 A. Eleven.
- 15 Q. And do you have your own room at where you live?
- 16 A. No.
- 17 Q. Who do you share the room with?
- 18 A. I have to share the room with my brother.
- 19 Q. Do you go to school?
- 20 A. On Monday.
- 21 Q. Normally, you went to school on Monday, Mya?
- 22 A. Yes.
- 23 Q. What grade are you in?
- 24 A. Second grade.
- 25 Q. Who are your teachers?

M. Ramirez - People - Direct

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- 1 A. Ms. Benjamin and Ms. Williams.
- 2 Q. Can you read, Mya?
- 3 A. Yes.
- 4 Q. What are the books that you like?
- 5 A. Dr. Suess.
- 6 Q. Mya, I need to ask you, do boys and girls have
- 7 private parts?
- 8 A. Yes.
- 9 Q. On the girl, what is the name of a girl's private
- 10 part?
- 11 A. Coochie.
- 12 Q. Could you explain where the coochie is?
- 13 A. Between your legs.
- 14 Q. Do you know a man named Daniel Ramos?
- 15 A. Yes.
- 16 Q. Who was he?
- 17 A. My mom's friend.
- 18 Q. Has he been to your apartment?
- 19 A. Yes.
- 20 Q. Has he driven you and your family places?
- 21 A. Yes.
- 22 Q. Has he watched or baby-sat you?
- 23 A. Yes.
- 24 Q. Do you see him in the courtroom today?
- 25 A. Yes.

M. Ramirez - People - Direct

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1 Q. Could you point at him and tell me what color
2 shirt he is wearing?

3 A. White.

4 Q. Could you point at him?

5 (The witness complied.)

6 MR. PERRI: May the record reflect the
7 witness identified the defendant.

8 THE COURT: It will so reflect.

9 Q. Mya, I want to talk to you about something that
10 happened over a year ago, the last school year.

11 A. Yes.

12 Q. I want to talk to you about something that
13 happened instead of being in second grade, you were in first
14 grade. In first grade, who were your teachers?

15 THE COURT: The name of the first grade
16 teacher.

17 A. Rabbinel and Ms. Bloomfeld.

18 Q. They were your teachers last year?

19 A. Yes.

20 Q. When you were in first grade, about a month after
21 you met Ms. Rabbinal and Ms. Bloomfeld, did you have to ride
22 in an ambulance?

23 A. Yes.

24 Q. Did you have to go to the hospital?

25 A. Yes.

M. Ramirez - People - Direct

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1 Q. On that same day you rode in the ambulance and
2 went to the hospital; did the police come to your house?

3 A. Yes.

4 Q. Why did the police come to your house that day?

5 A. Because Danny licked my coochie.

6 Q. What room were you in when Danny licked your
7 coochie?

8 A. In the kitchen.

9 Q. What were you wearing that day?

10 A. Pajamas.

11 Q. Were you wearing underwear?

12 A. Yes.

13 Q. What, if anything, did Danny do to your underwear
14 and pajamas?

15 A. He take my pants off, take my underwear off and
16 lick my coochie.

17 Q. When you say, he licked your coochie, did he put
18 his mouth on your coochie?

19 A. Yes.

20 Q. Did there come a time when your mom came into the
21 kitchen?

22 A. Yes. Got mad, grabbed Danny and kicked him out.

23 Q. Did Danny actually leave the house?

24 A. Yes.

25 Q. After Danny left the house, what did your mom do?

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M. Ramirez - People - Direct

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1 A. Called the police.

2 Q. Did the police actually come to your house that
3 day?

4 A. Yes.

5 Q. And after the police came to your house, did you
6 have to get into the ambulance?

7 A. Yes.

8 Q. After that, did you go to the hospital?

9 A. Yes.

10 Q. When you were at the hospital, did you meet a
11 woman who was a nurse?

12 A. Yes.

13 Q. What did you have to do when you met this nurse?

14 A. I forgot.

15 Q. Did the nurse do anything?

16 MR. BERGER: Objection.

17 THE COURT: Let me hear the whole question.

18 MR. BERGER: How about leading?

19 THE COURT: Let me hear the question
20 first.

21 Q. What, if anything, did the nurse do to you when
22 you were at the hospital?

23 A. She put Q-Tips in my coochie, so if I was bad or
24 good.

25 Q. Did you keep your clothes on or take your clothes

M. Ramirez - People - Cross

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1 off?

2 A. Take my clothes off.

3 MR. PERRI: Nothing further, your Honor.

4 THE COURT: Cross-examination, Mr. Berger.

5 CROSS-EXAMINATION

6 BY MR. BERGER:

7 Q. Good morning, Mya.

8 A. Good morning.

9 Q. My name is Michael.

10 A. Hello Michael.

11 Q. Do you know anybody else named Michael?

12 A. No.

13 Q. I'm going to ask you a few questions, okay?

14 A. Okay.

15 Q. You told us some things here this morning?

16 A. Yeah.

17 Q. Who is this person?

18 A. Perri.

19 Q. Perri?

20 A. Yes.

21 Q. Have you talked to him before?

22 A. Yes.

23 Q. How many times before?

24 A. Hmmm, I forgot.

25 Q. Well, you do remember talking to him before,

M. Ramirez - People - Cross

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1 correct?

2 A. Yes.

3 Q. And you don't remember whether it was once or
4 twice, or three, or more times?

5 A. More times.

6 Q. How many?

7 A. More times.

8 Q. Five times, six times, more than that?

9 A. Six times.

10 Q. At least six times?

11 A. Yes, I think.

12 Q. You could count, right?

13 A. Yes.

14 Q. So you know what six means, don't you?

15 A. Yes.

16 Q. So did you meet with Perri in his office?

17 A. Yes.

18 Q. And anywhere else?

19 A. No.

20 Q. You came to Perri's office at least or about six
21 times?

22 A. Yes.

23 Q. And he asked you questions?

24 A. Yes.

25 Q. And you knew what he was going to ask you this

M. Ramirez - People - Cross

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1 morning, didn't you?

2 A. Yes.

3 Q. We never met before, have we?

4 A. No.

5 Q. So, when you met with Perri, he asked you all of
6 the questions that he asked you today, correct?

7 A. Yes.

8 Q. You knew the questions you were going to be asked,
9 correct?

10 A. Correct.

11 Q. Now, when you saw Daniel that day, the day that
12 you went to the hospital?

13 A. You mean Danny?

14 Q. Danny, yes. He was Danny to you?

15 A. What?

16 Q. You called him Danny?

17 A. Yes.

18 Q. He took you lots of places?

19 A. Yes.

20 Q. He took you to the beach?

21 A. Yes.

22 Q. He took you to eat at various fast food places,
23 right?

24 A. Yes.

25 Q. He took you to the South Shore Guidance? Do you

M. Ramirez - People - Cross

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1 know where South Shore Guidance is?

2 A. No.

3 Q. Did you go with your brother to talk to people at
4 South Shore Guidance?

5 A. I don't remember.

6 Q. Do you know somebody named Georgina?

7 A. Georgina.

8 Q. Yes.

9 MR. PERRI: May we approach?

10 A. I don't know.

11 THE COURT: You may approach.

12 (Whereupon, there was a sidebar discussion as
13 follows:)

14 MR. PERRI: I don't know how far defense
15 counsel intends to go into the fact that she was in
16 counseling on this day with Georgina. If he wants to
17 explore this topic, the People's position is it opens
18 the door why she was there, and this happened multiple
19 times as opposed to one incident.

20 THE COURT: The door hasn't opened yet.

21 MR. BERGER: You haven't -- she said to you
22 it happened one time before.

23 THE COURT: You can ask whatever questions
24 you want to ask. I'll take objections as they come up.
25 No door opened at this time clearly. So at this point,

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1 if there is an objection, it's overruled, and I'll just
2 take the questions as they come up and take objections
3 as they come up. There's been no door opened at this
4 point.

5 MR. PERRI: Understood.

6 (Whereupon, the proceedings resumed.)

7 MR. BERGER: Could this be marked for
8 identification?

9 (Defendant's Exhibit A was marked for
10 identification.)

11 MR. BERGER: Show to the witness, please.

12 (Whereupon, Defendant's Exhibit A was handed
13 to the witness.)

14 Q. Do you recognize that picture, that building? Do
15 you recognize that building?

16 A. Yes.

17 Q. Didn't Danny take you there with your brother and
18 your mother?

19 A. Yes.

20 Q. And when you go there you talk to people?

21 A. Yes.

22 Q. Did one of the people you talk to, somebody named
23 Georgina?

24 MR. PERRI: Objection, relevance.

25 THE COURT: Overruled at this point. You may

M. Ramirez - People - Cross

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1 answer.

2 A. Yes.

3 Q. Do you know who Georgina is, don't you?

4 A. No. I mean, no.

5 Q. I asked you if you knew who Georgina is. Did you
6 mean to say yes?

7 A. Yes.

8 Q. So you do know who Georgina is?

9 A. Yes. Yes.

10 Q. You talked to Georgina, haven't you?

11 A. Yes. Sometimes I forget.

12 Q. You forget what?

13 A. About Georgina.

14 Q. Now you remember, right?

15 A. Yes.

16 Q. You don't have to look at the picture now. I'll
17 take it back.

18 Let's go back to that day, when your mother called
19 the police, okay?

20 A. Okay.

21 Q. And where did you see Daniel for the first time,
22 what part of your house?

23 A. I forgot again.

24 Q. You forgot?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. Well, you said that you told Perri before that you
2 were in the kitchen?

3 A. Yes.

4 Q. And is that the first time, the first place you
5 were when you saw Danny?

6 A. Yes.

7 Q. Where was Danny? What was he doing?

8 A. Danny was in the kitchen with me. Then he take my
9 pants off, take my panties off, then lick my coochie with
10 his mouth.

11 Q. And have you told that to Mr. Perri a lot of
12 times?

13 A. Yes.

14 Q. Now, how long did he do that? For how long did he
15 lick your coochie with his mouth and tongue?

16 A. Two times.

17 Q. Two times?

18 A. Yes.

19 Q. How long -- how many -- do you know what a second
20 is?

21 A. No.

22 Q. Can you count to five?

23 A. One, two, three, four, five.

24 Q. Did he do that to you for that length of time?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. Was it more than five, or did he do it for about
2 ten?

3 A. Five.

4 Q. He did it to five?

5 A. Yes.

6 Q. Did he say anything to you before that happened?

7 A. I don't know.

8 Q. Was he standing up when he did this?

9 A. Yes.

10 Q. And were you standing up?

11 A. Yes.

12 Q. So he was -- he didn't bend down?

13 A. Yes, he did bend down.

14 Q. How?

15 A. By doing like this.

16 MR. PERRI: May the record reflect --

17 THE COURT: Let the record reflect.

18 A. I don't know.

19 THE COURT: Let the record reflect that the
20 child leaned over to her left, bending at the waist,
21 leaning to the side. Go ahead.

22 Q. Did he bend like this at the waist and do it?

23 A. Yes.

24 Q. And so when we bent down at the waist, you were
25 standing up?

M. Ramirez - People - Cross

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1 A. Yes.

2 Q. And that's when he licked your coochie?

3 A. Yes.

4 Q. When he was standing, bending over at the waist,
5 right?

6 A. Yes.

7 Q. How many times did he do it that day in the
8 kitchen?

9 A. One.

10 Q. Just one?

11 A. Yes.

12 Q. And did you say, did he say anything to you before
13 he did it?

14 A. No.

15 Q. Did you say anything to him before he did it?

16 A. No.

17 Q. You say he pulled down your pajamas?

18 A. Yes.

19 Q. And did he tell you why he was doing that?

20 A. I don't know why he did that. I don't know why.

21 Q. He didn't say anything to you?

22 A. No.

23 Q. So Mya, when he bent over at the waist, like what
24 I'm doing now?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. You were standing up, right?

2 A. What?

3 Q. You were standing?

4 A. Yes.

5 Q. Was he holding you?

6 A. No.

7 Q. He wasn't touching you in any other way; is that
8 right?

9 A. That's right.

10 Q. You see me bending over now, right?

11 A. Yes.

12 Q. That's how he did it and you were standing up?

13 A. Yes.

14 Q. Mya, you took -- you swore before to the clerk; do
15 you remember swearing?

16 A. Yes.

17 Q. What does that mean?

18 A. That means swearing, that means like, I promise I
19 will tell the truth.

20 Q. What happens if you don't?

21 A. You lie.

22 Q. What happens to you?

23 A. You will be taken away and your mom will go to
24 jail.

25 Q. Did you go over those questions with Perri before

M. Ramirez - People - Cross

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1 you testified here?

2 A. Yes.

3 Q. How many times did you do that?

4 A. Like three or two.

5 Q. Did you ever say to anybody that this has happened
6 to you five times before?

7 A. Yes.

8 Q. Was that true?

9 A. I mean, no.

10 Q. It wasn't true?

11 A. No, because sometimes I always forget and
12 sometimes I don't.

13 Q. Have you ever lied?

14 A. Huh?

15 Q. Did you ever lie?

16 A. No.

17 Q. You never lied?

18 A. No, I never lie.

19 Q. So, when you told somebody that this happened five
20 times before, that was a lie or you forgot?

21 A. I forgot again.

22 Q. I'm asking you now, Mya, did this happen five
23 times before?

24 A. Yes.

25 Q. Did you tell Mr. Perri it happened only one time

M. Ramirez - People - Cross

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1 before?

2 A. Hmmm, forgot.

3 Q. Did you tell Mr. Perri this happened once
4 before?

5 A. Yes.

6 Q. Was that true?

7 A. Yes.

8 Q. Did you tell Georgina it happened five times
9 before?

10 A. Yes.

11 Q. Which is true?

12 A. Five.

13 Q. Five is true?

14 A. Yes.

15 Q. Where did these five times happen?

16 A. In the room with Danny.

17 Q. In what room?

18 A. In my mom's room.

19 Q. When did this happen, how much time before, were
20 you still in the first grade or before that?

21 A. Still first grade.

22 Q. Did you tell anybody that this happened when you
23 did these other five times?

24 A. Not in my class.

25 Q. Did you tell your mother?

M. Ramirez - People - Cross

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1 A. Hmmm, I don't know.

2 Q. When this happened before, you don't remember if
3 you told your mother?

4 A. No.

5 Q. Did you tell Georgina that it happened five times
6 before?

7 A. Yes.

8 Q. Was that true?

9 A. Yes.

10 Q. So when this happened, and the other five times
11 were all in your mother's bedroom?

12 A. No, it was two times. I always forget. Ughhh.

13 Q. When I asked you before if it was five times, were
14 you telling the truth?

15 A. No. I always forget.

16 Q. What do you mean you always forget?

17 A. About that because I always freeze my memories
18 about that.

19 Q. Did you talk to Mr. Perri about that?

20 A. Yes.

21 Q. Did he tell you to say that?

22 A. Hmmm, I don't know.

23 Q. When you say this happened before five times
24 before, was your mother home?

25 A. My mom was home.

M. Ramirez - People - Cross

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1 Q. Did you tell her afterwards?

2 A. No.

3 Q. Why not?

4 A. Because she knows she could whoop me.

5 Q. She could what?

6 A. She could whoop me.

7 Q. Did you tell Mr. Perri it happened only one time
8 before?

9 A. Yes.

10 Q. Was that true?

11 A. No.

12 Q. So you lied to Mr. Perri?

13 A. No, I was always forget.

14 Q. You told Mr. Perri it happened one time before,
15 right?

16 A. Yes.

17 Q. And I asked you if that was true and you said no;
18 is that right?

19 A. Yes.

20 Q. You didn't tell Mr. Perri the truth?

21 THE COURT: Take a short break.

22 Let's take a five-minute break. Don't

23 discuss this case while you are out of the room. Don't

24 let anyone discuss the case in your presence. Don't

25 get on your phones and try to do any research. See you

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1 in five minutes.

2 (Whereupon, the jury exited the courtroom.)

3 THE COURT: Mr. Perri, escort the child out.

4 MR. PERRI: I will not discuss any of the
5 child's testimony with her.

6 (Whereupon, a short recess was taken.)

7 THE CLERK: Case on trial continued,
8 Indictment 742N of 2014, People of the State of New
9 York vs. Daniel Ramos. All parties are present. The
10 jury is not present at this time.

11 People ready?

12 MR. PERRI: Yes, your Honor.

13 THE CLERK: Defense counsel?

14 MR. BERGER: Yes, your Honor.

15 THE COURT: Anything for the record before I
16 bring the jury back in?

17 MR. PERRI: No, your Honor.

18 MR. BERGER: No, your Honor.

19 (Whereupon, the jury entered the courtroom.)

20 THE CLERK: Do both sides stipulate all sworn
21 jurors are present and seated as noted on the record
22 before?

23 MR. PERRI: Yes.

24 MR. BERGER: Yes.

25 THE COURT: You may continue.

M. Ramirez - People - Cross

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1 THE CLERK: Mya, you are still telling the
2 truth, right?

3 THE WITNESS: Yes.

4 CROSS-EXAMINATION

5 BY MR. BERGER: (Continuing)

6 Q. Mya, I think where we took a break, you had said
7 to me you were -- you told Perri that it happened one time
8 before?

9 A. Yes.

10 Q. And that wasn't true, was it?

11 A. No.

12 Q. So you didn't tell Mr. Perri the truth, correct?

13 A. Correct. Sorry.

14 Q. You told Georgina that it happened five times
15 before?

16 A. Yes, five times.

17 Q. And you told that to Georgina after this incident
18 where you went to the hospital, correct?

19 A. Correct.

20 Q. You had never told that to anybody at the center,
21 Georgina, or anybody else, that it ever happened before,
22 correct?

23 A. Correct.

24 Q. So when you went to the center on the 21st of
25 October of 2013, and you told this to Georgina, did you tell

M. Ramirez - People - Cross

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1 her when it happened five times before?

2 A. Yes.

3 Q. What did you tell her?

4 MR. PERRI: May we approach?

5 THE COURT: You may.

6 (Whereupon, there was a sidebar discussion at
7 the bench as follows:)

8 MR. PERRI: The People object to this line of
9 questioning. He's asking for privileged communication
10 between the therapist and her patient.

11 THE COURT: I'm going to allow it, but the
12 door is completely opened to however you want to ask
13 this witness about what other prior acts may or may not
14 have happened.

15 MR. PERRI: Okay. Thank you, your Honor.

16 (Whereupon, the proceedings resumed.)

17 THE COURT: Ask the question again, please.

18 Q. What did you tell Georgina as to when this
19 happened, when you said it happened five times before?

20 A. I forgot.

21 Q. Mya, that didn't happen, it didn't happen five
22 times before, did it?

23 A. Yes.

24 Q. You remember it did?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. Tell when it happened, tell me what you said to
2 Georgina.

3 A. I forgot.

4 Q. Now, when you say this happened before, you said
5 that it happened in your mother's bedroom?

6 A. Yes.

7 Q. And were you standing up again, the same way?

8 A. Yes.

9 Q. And Danny was standing up the same way?

10 A. Yes.

11 Q. And were you wearing pajamas again the same way?

12 A. Yes.

13 Q. All of the other times, correct?

14 A. Correct.

15 Q. And you are standing up in your mother's bedroom,
16 and he is standing up and again, just like on this day, he
17 is bent over?

18 A. Yes, he is bent over.

19 Q. And what did he do?

20 A. Licked my coochie.

21 Q. He bent over at his hips, correct, just the way
22 I'm doing now?

23 A. Yes.

24 MR. BERGER: Let the record reflect I did
25 bend over at the waist.

M. Ramirez - People - Cross

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1 THE COURT: The record will so reflect.

2 Q. And your mother was in the house those times?

3 A. Yes.

4 Q. Where was she?

5 A. In the porch.

6 Q. Always on the porch, all those other five times?

7 A. Yes.

8 Q. And was it during the day, was it at night?

9 A. Yes. It was at nighttime then.

10 Q. I'm sorry?

11 A. And then Danny, then Danny takes my pants off and
12 put his --

13 Q. And did what?

14 A. Put his pecker in my butt.

15 Q. Pecker?

16 A. Yes.

17 Q. What is a pecker?

18 A. Between your legs.

19 Q. What is a pecker?

20 A. Between your legs.

21 Q. You mean a man's --

22 A. Yes.

23 Q. And did he put it inside your butt?

24 A. Yes.

25 Q. Did it hurt?

M. Ramirez - People - Cross

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1 A. Yes.

2 Q. Did you say anything to anybody?

3 A. No.

4 Q. Why not?

5 A. I mean, yes.

6 Q. Who did you tell?

7 A. My mom.

8 Q. You told your mom this happened when he put his
9 pecker in your butt?

10 A. Yes, or I don't know.

11 Q. Or what?

12 A. Or I don't know.

13 Q. What do you mean, or you don't know? When you
14 just said that Danny put his pecker in your butt, was that
15 the truth?

16 A. Yes.

17 Q. That's the truth?

18 A. Yes.

19 Q. So how long before this incident when you went to
20 the hospital, did that happen? How many days, or weeks, or
21 months before did that happen?

22 A. I forgot.

23 Q. Well, was it summertime? Was it in the fall? You
24 know what seasons are, don't you?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. Was it in the summer, or the fall, or the spring,
2 or the winter?

3 A. I don't know.

4 Q. When you say he put his pecker, where did you
5 learn the expression pecker?

6 A. My brain told me.

7 Q. Who?

8 A. My brain.

9 Q. Your brain?

10 A. Yes.

11 Q. And your butt, where did you learn the expression
12 butt?

13 A. Mom.

14 Q. Your mother?

15 A. Yes.

16 Q. Does your mother ever use the expression to eat?

17 A. No. I mean, no.

18 Q. You never heard her use the expression eat my
19 coochie or something like that?

20 A. No.

21 Q. That's the truth?

22 A. The truth.

23 Q. Did you hear your mother make the call to the
24 police on that day?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. You were with her when she made the call?

2 A. Yes.

3 Q. Right near her?

4 A. Yes.

5 Q. Did you hear her say to the police --

6 A. No.

7 Q. Did you hear her say to the police, my daughter
8 says he ate her coochie?

9 A. Not ate.

10 Q. You didn't hear that?

11 A. No.

12 Q. You were right next to your mother?

13 A. Yes.

14 Q. And you didn't hear her say that?

15 A. She didn't say ate, like.

16 Q. She said, like, not ate, is that what you are
17 saying?

18 A. Yes.

19 Q. If I tell you your mother testified --

20 MR. PERRI: Objection.

21 THE COURT: Sustained.

22 MR. BERGER: Can I get out the question?

23 THE COURT: It's not going to be a proper
24 question, so sustained.

25 MR. BERGER: I respectfully disagree.

kmm

M. Ramirez - People - Cross

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1 THE COURT: Your exception is noted.

2 Q. If I tell you your mother testified here in
3 court --

4 MR. PERRI: Objection.

5 THE COURT: Sustained.

6 MR. BERGER: I didn't finish the question.

7 THE COURT: Counselor, the question is not
8 going to be proper, so it's sustained. I'm noting your
9 exception to my ruling for the record.

10 Next question, please.

11 Q. So when you say he put his pecker in your butt,
12 did you bleed?

13 A. Yes.

14 Q. Did you tell your mother that?

15 A. I don't know.

16 Q. Well, you said it hurt, right?

17 A. Yes.

18 Q. And when you have a hurt, don't you tell your
19 mother about your hurts?

20 A. Sometimes and some don't.

21 Q. And this time did you tell her when you were
22 bleeding?

23 A. Yes, when my guinea pig bite me.

24 Q. I'm sorry?

25 A. When my guinea pig bite me, I bleed.

M. Ramirez - People - Cross

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1 Q. You say you were bleeding when he put his pecker
2 in your butt?

3 A. No.

4 Q. Did you tell me before you were bleeding?

5 A. No.

6 Q. I asked you before if it hurt. What did you say?

7 A. I said that. I didn't say bleeding.

8 Q. Okay. Did you say that it hurt?

9 A. Yes.

10 Q. Now, I'm asking you if in that time, when that
11 happened, did you tell your mother?

12 A. I don't know.

13 Q. You said before that if you did tell your mother,
14 your mother would whoop you?

15 A. Yes.

16 Q. What does that mean, whoop you?

17 A. She would whoop me with the belt.

18 Q. Has she ever done that before?

19 MR. PERRI: Objection.

20 THE COURT: Overruled.

21 A. Yes.

22 Q. She's done that to you before?

23 A. She always do that when I be bad.

24 Q. When you are bad, she whips you with a belt?

25 A. Yes.

M. Ramirez - People - Cross

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1 Q. Does that hurt?

2 A. Yes.

3 MR. PERRI: Objection.

4 THE COURT: Overruled.

5 Q. How many times would you say your mother whipped
6 you with a belt?

7 MR. PERRI: Objection.

8 THE COURT: Sustained now.

9 Q. Now, you spoke to Mr. Perri a number of times you
10 told us, correct?

11 A. Yes.

12 Q. And did he tell you that you were going to put
13 these things out of your mind?

14 A. No.

15 Q. Where did you get that from?

16 A. From my brain.

17 Q. Did you ever tell your brother that these things
18 happened?

19 A. With what?

20 Q. You say Danny did this to you five times before,
21 did you ever tell your brother?

22 A. No.

23 Q. Why not?

24 A. I don't know.

25 Q. Do you sleep in the same room with your brother,

M. Ramirez - People - Cross

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1 correct?

2 A. Correct.

3 Q. You never told him this was going on before?

4 A. No.

5 Q. And why not?

6 A. I don't know.

7 Q. Now, have you ever watched movies in your house?

8 A. Yes.

9 Q. Ever watch movies of people who don't have their
10 clothes on?

11 A. No.

12 Q. Were you told that you might be asked that
13 question by Mr. Perri?

14 MR. PERRI: Objection.

15 THE COURT: Sustained.

16 Q. Could you remember any of the other incidents of
17 the other five that you say happened before?

18 A. Danny licked my coochie.

19 Q. How many times did he do that?

20 A. Two.

21 Q. Two. And what about the other two, you say he
22 licked your coochie twice, he put his pecker in your butt,
23 right?

24 A. Yes.

25 Q. What else did he do?

M. Ramirez - People - Cross

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1 A. Kiss me.

2 Q. He kissed you?

3 A. Yes.

4 Q. Where?

5 A. On my lips.

6 Q. Kissed you on your lips?

7 A. Yes.

8 MR. PERRI: Your Honor, may we approach?

9 THE COURT: You may.

10 (Whereupon, there was a sidebar discussion at
11 the bench as follows:)

12 MR. PERRI: I understand that every
13 courtroom's rules are different. The defense counsel
14 is receiving notes from the audience.

15 THE COURT: I wasn't watching that.

16 MR. PERRI: Is that allowed?

17 THE COURT: I will keep my eye open.

18 MR. BERGER: It's not prohibited.

19 THE COURT: Normally there is a bar that
20 separates the audience from coming up to the attorneys.
21 They would not be allowed to walk to the bar from him.

22 MR. BERGER: I could walk to the back of the
23 courtroom.

24 THE COURT: Do it with respect.

25 MR. BERGER: I don't think there is lack of

M. Ramirez - People - Cross

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1 respect.

2 THE COURT: I didn't see it happen. I'm not
3 opposed to it happening. I will pay attention to it to
4 make sure it's done in a way that doesn't interrupt the
5 proceedings. I don't think it has at this point, so
6 it's not a problem.

7 (Whereupon, the proceedings resumed.)

8 Q. Mya, how many times did you say Danny put his
9 pecker in your butt?

10 A. Three.

11 Q. I'm sorry?

12 A. Three.

13 Q. Three separate times?

14 A. Yes.

15 Q. And it hurt every time?

16 A. Yes.

17 Q. And this happened in your mother's room or
18 somewhere else?

19 A. It happened in my mother's room.

20 Q. And your mother was in the house at the time?

21 A. No, not at nighttime. She went out.

22 Q. She went out?

23 A. Yes, always in the nighttime.

24 Q. How many times did it happen at night?

25 A. Three.

M. Ramirez - People - Cross

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1 Q. Three times he put his pecker in your butt at
2 night?

3 A. Yes.

4 Q. And your brother was home?

5 A. Yes.

6 Q. And your brother was up at the time?

7 A. No.

8 Q. Where was he?

9 A. In his room.

10 Q. And you were where?

11 A. In mom's bed.

12 Q. And do you remember what time at night this
13 happened?

14 A. No.

15 Q. And how long was his pecker in your butt when this
16 happened?

17 A. I don't know.

18 Q. A minute, a second, five minutes, ten minutes, any
19 idea?

20 A. No.

21 Q. Did it hurt?

22 A. Yes.

23 Q. What happened after it stopped? What happened?

24 A. Mom comes home.

25 Q. There came a time when he took his pecker out of

kmm

M. Ramirez - People - Cross

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1 your butt, right?

2 A. Yes.

3 Q. Did you see anywhere you were bleeding, any liquid
4 at all from your butt?

5 A. No.

6 Q. No blood, right?

7 A. Right.

8 Q. No other liquids, correct?

9 A. Correct.

10 Q. And were you crying?

11 A. No.

12 Q. So you never told these things to Georgina, did
13 you, until after this incident when you went to the
14 hospital?

15 A. Yes.

16 Q. That's what you told me before, correct?

17 A. Correct.

18 Q. Were you up when your mother came home?

19 A. Yes.

20 THE COURT: At what time, counsel?

21 Q. You say your mother came home at night?

22 A. Yes.

23 Q. And did you tell your mother what had happened
24 when she came home?

25 A. No.

M. Ramirez - People - Cross

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1 Q. Why not?

2 A. I don't know.

3 Q. Didn't you tell me before that the other five
4 times that it happened, your mother was on the porch and you
5 were inside her bedroom?

6 A. Yes.

7 Q. So when you said that to me, was that true?

8 A. True. She was in the porch in the daytime.

9 Q. Didn't you tell me when I asked you before, about
10 the five times that it happened, and I asked you where your
11 mother was, you said those five times she was outside on the
12 porch; do you remember saying that?

13 A. Yes, but in the daytime.

14 Q. So it happened more than five times?

15 A. Huh?

16 Q. If it happened five times in the daytime, did it
17 happen more than five times?

18 A. That's it.

19 Q. That's it?

20 A. Yes.

21 Q. Let me ask you again, when? Did you tell me
22 before that the five times that it happened, your mother was
23 on the porch?

24 A. No. In the daytime -- not in the daytime, in the
25 nighttime.

M. Ramirez - People - Cross

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1 Q. All right. You didn't tell me the five times your
2 mother was on the porch?

3 A. I did.

4 Q. You did tell me that, right?

5 A. Yes.

6 Q. When you said that to me, was that true?

7 A. Yes.

8 Q. So, it didn't happen then at nighttime?

9 A. It did happen at nighttime, except for daytime.

10 Q. Mya, just so I understand, when I asked you before
11 where your mother was, when these other five times occurred,
12 you told me she was on the porch; do you remember saying
13 that to me?

14 A. Yes.

15 Q. When you said that to me, was that true?

16 A. Yes.

17 Q. So now, are you saying that it happened more than
18 five times and that it happened at nighttime as well?

19 A. No, not in the daytime.

20 Q. What does that mean, I'm sorry?

21 A. Not in the daytime.

22 Q. What do you mean? What are you saying?

23 MR. PERRI: Objection.

24 THE COURT: Sustained as to the form of the
25 question.

M. Ramirez - People - Cross

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1 Q. Where did you learn about pecker in the butt?

2 MR. PERRI: Objection.

3 THE COURT: Sustained.

4 Q. Did you ever hear anybody talk about those things?

5 A. No.

6 Q. So, you just -- where did you learn about the word
7 pecker?

8 MR. PERRI: Objection.

9 THE COURT: Sustained.

10 A. My brain.

11 Q. You never heard anybody use that expression?

12 A. No.

13 THE COURT: Overruled.

14 You can answer.

15 MR. PERRI: Objection.

16 Q. So you never heard that word, that expression,
17 pecker used in your house?

18 MR. PERRI: Objection.

19 THE COURT: Sustained.

20 A. No.

21 THE COURT: I'll withdraw the sustained of
22 the objection since the answer was given.

23 MR. BERGER: Is that an answer on the record?

24 THE COURT: It is.

25 Q. Do you remember when you were in Mr. Perri's

M. Ramirez - People - Cross

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1 office and you told him this happened once before?

2 A. Yes.

3 Q. Do you remember how long ago that was?

4 Approximately, do you know what month we're in now?

5 A. May.

6 Q. Do you remember talking to Mr. Perri in April?

7 A. No.

8 Q. You talked to him only in the month of May?

9 A. I mean, yes, in April.

10 Q. Did you tell him in April that this happened only
11 once before?

12 A. No.

13 Q. When did you tell Mr. Perri this happened only
14 once before?

15 A. I don't know.

16 Q. But you did tell him that?

17 A. Yes.

18 Q. And you were in his office?

19 A. Yes.

20 Q. When you told him that, that wasn't true, was it?

21 MR. BERGER: Mr. Perri, you don't have to
22 shake your head.

23 MR. PERRI: I apologize, your Honor.

24 THE COURT: Let the record reflect there's
25 colloquy between the attorneys. I'll remind the

M. Ramirez - People - Cross

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1 members of the jury nothing that the attorneys say or
2 do is evidence in this case. The evidence comes from
3 the stand.

4 You may continue, Mr. Berger.

5 Q. When you told that to Mr. Berger, that wasn't
6 true, was it?

7 A. It was.

8 Q. So it happened only once before?

9 A. Yes.

10 Q. Not five times before?

11 A. Yes.

12 Q. Yes, what?

13 A. Yes, it happened five times.

14 Q. But you told Mr. Perri it happened only once
15 before, did you not?

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 A. Yes, I did.

19 Q. Was that true?

20 MR. PERRI: Objection.

21 A. I'm just confused.

22 THE COURT: You can stop talking. Let's try
23 to move on to another topic. You asked these questions
24 a sufficient amount of times, Mr. Berger.

25 Q. When you say these things happened, did Daniel

M. Ramirez - People - Cross

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1 ever talk to you while it was going on?

2 A. I don't know.

3 Q. Well, you remember these things happening?

4 A. Yes.

5 Q. You are sure?

6 A. Yes.

7 MR. PERRI: Objection.

8 THE COURT: You are sure?

9 THE WITNESS: Yes.

10 Q. These things didn't happen, did they, Mya?

11 A. With what?

12 Q. He never put his pecker in your butt, and he never
13 licked your coochie?

14 A. Yes.

15 Q. You are saying this, it happened?

16 A. Yes.

17 Q. So, when these things happened, did Daniel ever
18 speak to you and say anything?

19 A. No.

20 Q. He never gave you orders, directions?

21 A. I mean, yes. I always forget.

22 Q. Well, you are saying these things happened,
23 correct?

24 A. Correct.

25 Q. You remember these things, that you say happened?

kmm

M. Ramirez - People - Cross

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1 A. Yes.

2 Q. So, do you remember him speaking to you and saying
3 anything to you?

4 A. Clean up your room.

5 Q. I'm sorry?

6 A. Clean up your room.

7 Q. He said, clean up the room? He said, clean up
8 your room?

9 A. Yes.

10 Q. Didn't he help you with homework?

11 A. No.

12 Q. He never helped you with homework?

13 A. No.

14 Q. When you say he did these things to you, pecker in
15 the butt, licked your coochie, did he give you any
16 directions as to take off your clothes or anything like
17 that?

18 A. No.

19 Q. So, were you always wearing pajamas when these
20 things happened?

21 A. Yes.

22 Q. Always pajamas?

23 A. Yes.

24 Q. Even during the daytime?

25 A. Yes.

M. Ramirez - People - Redirect 807

1 MR. BERGER: Nothing further. Thank you.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. PERRI:

5 Q. Mya, after the day when you went in the ambulance,
6 that day where the police came to your apartment, did you
7 talk to your mom about what Danny was doing?

8 A. Yes.

9 Q. Did you tell her?

10 MR. BERGER: Objection.

11 THE COURT: I don't have a full question yet.

12 MR. BERGER: That didn't apply when I asked
13 mine, Judge.

14 MR. PERRI: Your Honor.

15 THE COURT: All right, Mr. Berger, your
16 exception to my rulings are noted for the record. You
17 may continue, and I'll take an objection at the point
18 in time that the question is completed.

19 Q. Did you tell your mom that day that this had
20 happened before?

21 MR. BERGER: Objection.

22 THE COURT: Sustained.

23 A. Yes.

24 Q. What, if anything, did you tell your mom?

25 MR. BERGER: Objection.

M. Ramirez - People - Redirect 808

1 THE COURT: Overruled. The door is open.

2 A. I told my mom that Danny licked my coochie.

3 Q. Now, Mya, you testified about this happened more
4 than one time before. Do you know the exact number of times
5 Danny licked your coochie or touched you with his pecker;
6 could you count to the exact number?

7 A. Five.

8 Q. Do you know the exact dates that it happened on,
9 like what day, April 15th, January 3rd, do you know the
10 exact dates of when these things happened?

11 A. (Nodding)

12 Q. You have to say yes or no.

13 A. No.

14 Q. Were you told before when you came to court today
15 that unless you got permission you couldn't talk about the
16 past instances?

17 MR. BERGER: Objection.

18 THE COURT: Overruled.

19 Q. Were you told unless you were given permission you
20 couldn't talk about stuff that happened before the day the
21 ambulance came?

22 A. I don't know.

23 Q. Mya, you said it happened at nighttime except for
24 the daytime. What did you mean by that, it happened both at
25 night and during the day?

M. Ramirez - People - Recross

809

1 MR. BERGER: Objection.

2 THE COURT: One second. Just ask the
3 question again. Objection is sustained as to form
4 only.

5 Wait Mya for another question.

6 Q. What did you mean when you said it happened at
7 nighttime except for the daytime?

8 A. I don't know.

9 MR. PERRI: Nothing further.

10 THE COURT: Recross, Mr. Berger.

11 RECROSS-EXAMINATION

12 BY MR. BERGER:

13 Q. Did you ever talk to the police about this?

14 A. Yes.

15 Q. When?

16 A. I don't know.

17 Q. Do you remember who you spoke to?

18 A. The police.

19 Q. Do you remember which person, what his name was or
20 her name?

21 A. I don't know.

22 Q. Do you remember when this was?

23 A. No.

24 Q. Was it shortly after you went to the hospital?

25 A. Yes.

M. Ramirez - People - Recross

810

1 Q. And you spoke to the police. Did you tell them
2 that this happened five times?

3 A. No, only -- I asked the police, Danny licked my
4 coochie.

5 Q. That's all you told them?

6 A. Yes.

7 Q. So you left out all these other times?

8 MR. PERRI: Objection. Beyond the scope of
9 redirect, your Honor.

10 THE COURT: Sustained.

11 MR. BERGER: Mr. Perri asked about whether or
12 not she could talk about prior past instances, that she
13 wasn't allowed to. He asked her.

14 THE COURT: Let's see if the child
15 understands about having left something out. Ask the
16 question again.

17 Q. The police asked you about Danny, didn't they?

18 A. Yes.

19 Q. They asked you what he did to you; did they ask
20 you that?

21 A. Yes.

22 Q. Did you tell them about the five other instances?

23 A. I tell him about -- I told the police that Danny
24 licked my coochie.

25 Q. And you left out the other instances?

M. Ramirez - People - Recross

811

1 A. Yes.

2 Q. Why?

3 MR. PERRI: Objection.

4 THE COURT: Sustained.

5 MR. BERGER: On what basis?

6 THE COURT: Because I ruled. Sustained.

7 Q. You left out that these things happened?

8 MR. PERRI: Objection.

9 THE COURT: Sustained.

10 A. Yes.

11 Q. And did the police write down what you told them?

12 MR. PERRI: Objection.

13 THE COURT: Sustained.

14 A. Yes.

15 Q. When you talked to them, the police, they were
16 writing?

17 MR. PERRI: Objection.

18 THE COURT: Sustained.

19 Don't answer the question.

20 A. Yes.

21 MR. BERGER: How is that objectionable?

22 THE COURT: We're outside the scope of the
23 redirect of the People.

24 MR. BERGER: That's the basis outside the
25 scope.

M. Ramirez - People - Recross

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1 THE COURT: I'll excuse the jury at this
2 time. Give us five minutes, please. Don't talk about
3 the case.

4 (Whereupon, the jury exited the courtroom.)

5 THE COURT: Take the young lady into the
6 hallway.

7 (Whereupon, the witness exited the
8 courtroom.)

9 THE COURT: If you question my ruling again
10 in front of the jury, I won't excuse them the next
11 time, and I won't keep my patience. I'm not going to
12 be questioned in front of the jury. I told you that
13 time and again. Don't do it again, counselor. Don't
14 do it again, counselor.

15 MR. BERGER: I'll act for my client. I will
16 defend him as I should. You say it's outside the
17 scope. The prosecutor asked, were you told not to talk
18 about these past instances. She says, I don't know.
19 Then I asked her whether or not she talked to the
20 police, she said, yes. I asked her whether or not they
21 wrote anything down, and she said, yes. You sustained
22 the objection. Where is your fairness?

23 THE COURT: You are fully aware of the fact
24 that this child via a Molineaux application of the
25 People, had another incident to discuss. I ruled that

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1 that was not to come in. It had no place in this
2 hearing. This witness was instructed, as you well
3 know, that she was not to talk about any of the other
4 instances, or at that point, incident, because I was
5 only aware of one.

6 Now, you are trying to make it into something
7 more than it is. When Mr. Perri asked that question,
8 anyone reading the record will know he was asking about
9 the instructions the People were required to give to
10 her to follow this Court's ruling with regards to
11 Molineaux. That is it. This is not going to be
12 confused and conflated to something it is not. Do not
13 question me in front of the jury. If you want to take
14 exception to my rulings, you are more than welcome to
15 do so. You can speak on the record as long as I don't
16 have a jury waiting, for as long as you want, but you
17 will not question my rulings like you have just done in
18 front of this jury. And if you continue to do it
19 again, I won't excuse the jury. I'll do what I need to
20 do with regards to what I need to be said right in
21 front of them and let the chips fall where they may.
22 I'm attempting to give your client a fair trial, as he
23 is entitled to, but you need to follow the rules of
24 this Court and you need to follow the law.

25 MR. BERGER: Nobody is conflating anything

1 the witness said. The fact of the matter is she said
2 she talked to the police and they were writing
3 something down and --

4 THE COURT: Let me play this out for you.
5 This will be the last comment on this. I imagine what
6 will happen is the jury should believe this little girl
7 when she talked about the police writing something down
8 in their notes, but don't believe her about anything
9 else. That's a comment you can make to the jury when
10 doing the summation.

11 MR. BERGER: You are not trying the case. I
12 don't need to deal with two prosecutors. This is
13 unfair. You are not trying the case. I'm not
14 conflating anything.

15 THE COURT: Bring in the jury, please.

16 MR. BERGER: The question propounded by
17 Mr. Perri was, were you told you couldn't talk about
18 past instances, plural. Mr. Perri represented to this
19 Court that there was only one prior instance. So, I
20 had no idea that we were talking about there were
21 limitations with respect to five. Now, somebody is
22 playing fast and loose here. Either they knew about
23 the five and misrepresented it to the Court, or they
24 didn't. In either case, Mr. Perri asked about, were
25 you not permitted to talk about instances. So I assume

1 we were talking about the five, not the one that
2 Mr. Perri represented to the Court.

3 MR. PERRI: Your Honor, the People gave
4 instructions to the witness in abundance of caution
5 that she was not to speak about anything that happened
6 before the day in question with regards to her and the
7 defendant, that she was not supposed to, unless given
8 permission to talk about any prior occasions. We were
9 aware of one occasion she specifically and repeatedly
10 disclosed to us. I was not aware of the other one.
11 She did not disclose them.

12 However, to follow your Honor's ruling to
13 ensure that the defendant was provided a fair trial,
14 according to your Molineaux ruling, I instructed her
15 not to speak about anything, as she is a child, and I
16 would be concerned that she wouldn't constrain herself
17 or understand that one meant all of them in the
18 Molineaux ruling that we hadn't gotten permission from
19 the Court for her to testify about those.

20 THE COURT: Thank you both for your
21 positions. They are noted for the record.

22 (Whereupon, the witness resumed the stand.)

23 (Whereupon, the jury entered the courtroom.)

24 THE CLERK: Both sides stipulate all sworn
25 jurors are present, People?

Proceedings

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1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense?

3 MR. BERGER: Yes.

4 THE COURT: You may continue.

5 MR. BERGER: No further questions.

6 THE COURT: Mr. Perri?

7 MR. PERRI: No, your Honor.

8 THE COURT: All right. Miss Ramirez, you can
9 step down. Be careful. We don't need you to come back
10 anymore. Thank you.

11 Ladies and gentlemen, this will be a good
12 time for a break. Let me give you admonitions over
13 this break.

14 Please remember you must keep an open mind
15 throughout this entire trial. Do not discuss this case
16 amongst yourselves or with anyone else during the
17 trial. Do not permit anyone to discuss the case in
18 your presence. Do not talk to the lawyers, witnesses
19 or the defendant about anything during the trial.

20 Remember, if you see any of us during the
21 lunch break, we will ignore you. Do not take it
22 personally.

23 Do not visit or go to the place where it was
24 allegedly committed, or any other place involved in the
25 case.

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1 If there is any news coverage of the case, do
2 not read, view or listen to any accounts or discussions
3 of the case reported by the news media.

4 Do not attempt to research any fact, issue or
5 law related to this case whether by discussion with the
6 others on the Internet, or by any other means or
7 source.

8 Have a great lunch. See you all back here at
9 2:00. Hopefully we'll start by 2:15. Let me say this
10 to the jury before I let you go with regards to
11 appointments you might all need to make. I want to
12 remind everyone that we are not working this Friday,
13 which is the 15th. We are not working the 18th, 22nd,
14 or the 25th. If you can get appointments on those
15 days, great. If you can't, send us a note. If it is
16 an appointment you must make for a day we're on trial,
17 just send us another note and we'll try to work around
18 your schedules. If possible, if there are any matters
19 you need to attend to, if you could do it on those
20 dates we're not working, I would appreciate that.

21 (Whereupon, the jury exited the courtroom.)

22 THE COURT: Anything for the record before we
23 break?

24 MR. BERGER: No, your Honor.

25 MR. PERRI: No, your Honor.

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1 THE COURT: Have a great lunch. See everyone
2 at two.

3 (Whereupon, a luncheon recess was taken.)

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THE CLERK: Case on trial continued,
Indictment 742N of 2014, People of the State of New
York vs. Daniel Ramos.

Appearances previously noted on the record.
The jurors are not present.

Both sides ready?

MR. PERRI: Yes.

MR. BERGER: Yes.

THE CLERK: Any applications?

MR. PERRI: No.

MR. BERGER: No.

THE COURT: Let's bring in the jury.

(People's Exhibits 3-7 were marked for
identification.)

(Whereupon, the jury entered the courtroom.)

THE CLERK: Do both sides stipulate to the
presence and properly seat jury?

MR. PERRI: Yes, your Honor.

MR. BERGER: Yes, your Honor.

THE COURT: I hope you enjoyed your lunch
break.

Call your next witness.

K. McAllister - People - Direct 820

1 MR. PERRI: Prior to calling my next witness,
2 I do have an application to move into evidence the
3 certified copies of the medical records of Mya Ramirez.
4 The documents are signed and certified by the custodian
5 records of the Nassau University Health System, and I
6 ask them be received into evidence.

7 MR. PERRI: It was marked for identification
8 as People's 3.

9 MR. BERGER: No objection.

10 THE COURT: Let's have it marked into
11 evidence as People's 3.

12 (People's Exhibit 3, previously marked for
13 identification, was marked and received in evidence.)
14 Measuring mark three in evidence.

15 MR. PERRI: The People now would like to call
16 Nurse Kathleen McAllister, your Honor.

17 K A T H L E E N M C A L L I S T E R, Nurse, called on
18 behalf of the People, having been duly sworn, took the
19 witness stand and testified as follows:

20 THE CLERK: State your name, spell your first
21 name and last name and give your county of residence.

22 THE WITNESS: Kathleen McAllister,

23 K-A-T-H-L-E-E-N F. M-C-A-L-L-I-S-T-E-R.

24 DIRECT EXAMINATION

25 BY MR. PERRI:

K. McAllister - People - Direct 821

1 Q. Ms. McAllister, are you currently employed?

2 A. Yes.

3 Q. Who are you employed by?

4 A. Nassau University Medical Center.

5 Q. What are you employed as at the Nassau County
6 Medical Center?

7 A. Registered nurse.

8 Q. Do you have your degree in nursing?

9 A. Yes.

10 Q. Where did you get your degree in nursing?

11 A. Jewish Hospital and Medical Center in Brooklyn.

12 Q. What department do you currently work for at
13 Nassau County Medical Center?

14 A. I work in the quality management department.

15 Q. How long have you worked at Nassau County Medical
16 Center?

17 A. Thirty-four years.

18 Q. Outside the quality management department, have
19 you worked in other departments at the Nassau County Medical
20 Center?

21 A. Yes.

22 Q. What other departments have you worked for?

23 A. In the emergency room for twenty-eight years.

24 Q. Aside from current responsibilities at the quality
25 management department, do you have any other

K. McAllister - People - Direct

822

1 responsibilities right now at the medical center?

2 A. I take calls as a sexual assault nurse examiner.

3 Q. And as a nurse, do you have a certification?

4 A. I am advanced cardiac life support certified and
5 pediatric life support certified.

6 Q. What does it mean to be a sexual assault examiner?

7 A. Sexual assault examiner is a registered nurse who
8 has additional training in history taking, examination and
9 collection of evidence.

10 Q. And what kind of additional training is required
11 to become a sexual assault nurse examiner?

12 A. I took a 40-hour course at the Academy of Medicine
13 in New York City.

14 Q. And is there any additional training other than
15 the 40-hour course?

16 A. There's a one-year preceptorship.

17 Q. Explain what the one-year preceptorship is?

18 A. It is where a preceptor or my director supervises
19 my cases for a year.

20 Q. Did you complete the preceptorship program?

21 A. Yes.

22 Q. Did you complete it successfully?

23 A. Yes.

24 Q. How many sexual assault examinations have you
25 conducted?

K. McAllister - People - Direct

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1 A. Sixteen.

2 Q. Prior to becoming a sexual assault nurse examiner,
3 did you ever assist in treating or examining victims of
4 sexual assault before becoming a nurse examiner?

5 A. Yes.

6 Q. Explain how that happened.

7 A. So, before I guess there were SANE programs as a
8 nurse, it was part of our responsibility working in the
9 emergency room to assist the physician in the exam.

10 Q. Could you explain to the jury what a sexual
11 assault SANE exam, what that entails? What is that?

12 A. A SANE exam is an exam that includes a detailed
13 history of full examination and a collection of evidence.

14 Q. And are SANE exams conducted at the Nassau County
15 Medical Center?

16 A. Yes.

17 Q. Where in the medical center are those exams
18 conducted?

19 A. We have a special sexual assault exam room.

20 Q. And as part of conducting a SANE exam, do you use
21 a sexual offense examination collection kit?

22 A. Yes.

23 Q. Is that what is commonly referred to as a rape
24 kit?

25 A. Yes.

K. McAllister - People - Direct 824

1 Q. Now, directing your attention to October 16, 2013,
2 were you working at Nassau County Medical Center that day?

3 A. Yes.

4 Q. Were you also on call at some point that day as a
5 SANE nurse?

6 A. Yes.

7 Q. Did there come a time when you received an on-call
8 assignment?

9 A. Yes.

10 Q. And what did you do in response to receiving that
11 on-call assignment?

12 A. I came into the hospital and met the patient in
13 the pediatric emergency room.

14 Q. Did you learn the identity of that patient to be
15 Mya Ramirez?

16 A. Yes.

17 Q. Did there come a time when you actually conducted
18 a SANE exam of Mya Ramirez.

19 A. Yes.

20 MR. PERRI: May I ask the witness be shown
21 People's 3 in evidence.

22 THE COURT: She may.

23 Q. Please look at People's 3 in evidence. I would
24 like to ask you, do you recognize -- what do you recognize
25 People's 3 to be?

K. McAllister - People - Direct 825

1 A. It's the patient's medical record.

2 Q. And directing your attention to the section of the
3 medical records labeled sexual assault examination section,
4 can I ask you who made the entries in that section of the
5 medical records of Mya Ramirez?

6 A. I did.

7 Q. And did you make those entries into that section
8 of the medical records at or about the time you examined Mya
9 Ramirez?

10 A. Yes.

11 Q. Now, drawing your attention to October 16, 2013,
12 what was the first portion of the SANE exam you completed
13 with Mya Ramirez?

14 A. The first portion would be to get a detailed
15 history and ask her why she was there.

16 MR. BERGER: I'm sorry, I didn't hear the
17 last part of the phrase.

18 A. And ask her why she was there.

19 Q. Did you, in fact, take a history?

20 A. Yes.

21 Q. And what does it mean to take a history from a
22 patient in this context?

23 A. It is a very detailed history and you want to
24 start from the beginning and try to find out as much
25 information as possible, and attempt to get who was

K. McAllister - People - Direct 826

1 involved, or where it was, or it is just a detailed -- if
2 they are hurt, what body parts are involved, just a detailed
3 history involving the events that are told.

4 THE COURT: Mr. Perri, I'll stop you for one
5 moment. I'll ask you to sit tight for one moment. I
6 just need to step off the bench.

7 (Whereupon, a there was a pause in the
8 proceedings.)

9 THE COURT: Thank you. Thank you. I
10 apologize for that. You may continue.

11 MR. PERRI: Thank you, your Honor.

12 Q. Ms. McAllister, is obtaining a history from the
13 sexual assault victim an important step in that patient's
14 medical treatment and diagnosis?

15 A. Yes. The history guides the exam.

16 Q. And is identifying the assailant relevant in
17 treatment discharged in the safety plan when questioning a
18 child sex abuse victim?

19 A. Yes.

20 Q. What, if anything, did Mya say to you during the
21 taking of the history?

22 A. Patient states Daniel licked my coochie.

23 Q. After Mya made that statement to you, what, if
24 anything, did you ask her?

25 A. I asked her to point to what she meant by coochie.

K. McAllister - People - Direct

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1 Q. What, if anything, did she say or do in response
2 to you asking her that question about what a coochie was?

3 A. She pointed to her front genital area.

4 Q. So after taking the history, what was the next
5 step in your exam of Mya Ramirez?

6 A. I explained the exam and obtained a consent for
7 evidence collection, and then I asked Mya to get undressed,
8 put her on the exam table and began a full visual
9 examination from head to toe. And then I began an evidence
10 collection using a sexual assault evidence collection kit.

11 MR. PERRI: I ask the witness be shown what
12 was pre-marked as People's exhibit 4 for
13 identification.

14 THE COURT: She may.

15 MR. PERRI: Thank you, your Honor.

16 Q. Nurse McAllister, do you recognize what was marked
17 for identification as People's 4?

18 A. Yes.

19 Q. What do you recognize it to be?

20 A. It's the kit, the evidence kit that was used.

21 Q. And was this the evidence kit used for examination
22 of Mya Ramirez?

23 A. Yes.

24 Q. And how do you recognize it to be that specific
25 evidence kit?

K. McAllister - People - Direct 828

1 A. My name is on it.

2 Q. Are there any other markings that you recognize?

3 A. Yes.

4 Q. What are other markings; do you recognize?

5 A. There is an orange evidence police seal.

6 Q. Now, is that kit in the same or substantially the
7 same condition as when you last had custody of it?

8 A. No.

9 Q. What differences do you note?

10 A. There's all different colored tape on it, and my
11 seal is broken and it looks open.

12 Q. When you last had custody of that kit, was it
13 sealed?

14 A. Yes.

15 Q. Ms. McAllister, I ask you to please open People's
16 4 and look inside. Do you recognize what is contained
17 inside?

18 A. Yes.

19 Q. Could you go through what is contained -- what do
20 you recognize the contents of the box to be?

21 A. Right now there are envelopes.

22 Q. And were those envelopes present when you sealed
23 that box?

24 A. Yes.

25 Q. And are they in the same condition as when you

K. McAllister - People - Direct

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1 sealed that box, or are they different?

2 A. They're different.

3 Q. How are those envelopes different?

4 A. There's red tape on it now and they're opened.

5 Q. And the markings on each of the envelopes, who
6 placed the markings in the front of the envelope?

7 A. I did.

8 Q. When you placed the envelopes in the box, were
9 they opened or sealed?

10 A. Sealed.

11 MR. PERRI: May I ask People's 4 be received
12 into evidence.

13 THE COURT: Mr. Berger.

14 MR. BERGER: I'll take a look, please.

15 THE COURT: Certainly.

16 MR. BERGER: No objection.

17 THE COURT: Let's have it marked into
18 evidence as People's 4, please.

19 (People's Exhibit 4, previously marked for
20 identification, was marked and received in evidence.)

21 MR. PERRI: I ask you to give it back to the
22 witness.

23 (People's Exhibit 4 was handed to the
24 witness.)

25 Q. Nurse McAllister, go through each of the envelopes

K. McAllister - People - Direct

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1 in order, inside of that box and explain what each of them
2 are.

3 A. Inside the box come instructions and envelopes.
4 They're labeled step, step one, step two. Step one is oral
5 swabs and smear. Step two is a buccal specimen. Step three
6 is trace evidence. Step five is underwear, step six is
7 debris collection, step seven is dried secretions and/or
8 bite marks. Step eight is fingernail scrapings. Step nine
9 is pulled head hairs. Step ten is pubic hair combings.
10 Step eleven is pubic hairs. Step twelve is perianal and
11 anal swabs and smear. Step fourteen is vaginal swabs and
12 smear, and step fifteen is cervical swabs and smear.

13 Q. In addition to the envelopes contained in that box
14 presently, was there an additional envelope that was there
15 when you sealed it?

16 A. Yes.

17 Q. What envelope was additionally there?

18 A. Step 13 vulva swab.

19 Q. Did you, in fact, complete the vulva swab?

20 A. Yes.

21 Q. When you completed the vulva swab, did you seal
22 the envelope?

23 A. Yes.

24 Q. Did you complete each and every single one of the
25 steps you listed of the envelopes in that box?

K. McAllister - People - Direct

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1 A. No.

2 Q. Could you go over with the jury what steps you did
3 to conduct evidence collection with Mya Ramirez?

4 A. I collected step one, oral swabs and smear. I
5 collected step two, buccal specimen.

6 Q. I'll stop you right there. Buccal swab and
7 specimen, what is a buccal swab?

8 A. Inside this envelope is like a Q'tip, but the end
9 is almost like a toothbrush with teeth. What we do put
10 inside the patient's mouth and vigorously rub it for a few
11 seconds. I believe it is a controlled sample.

12 Q. Did you in fact do what you just described to Mya
13 Ramirez?

14 A. Yes.

15 Q. After receiving that buccal swab, what did you do
16 with it?

17 A. So, it gets put into the swab dryer because it
18 needs to air dry. Once dried, inside the envelope is a box.
19 The swab goes inside the box, inside the envelope and the
20 envelope gets sealed.

21 Q. Thank you. You can continue with the next step.

22 A. What step was I up to? Step three, I did not
23 collect trace evidence. Step five is underwear, I
24 collected.

25 Q. Nurse McAllister, if you could, could you please

K. McAllister - People - Direct

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1 take out the envelope and there are gloves in front of you.

2 Could you look inside of the envelope and ask if you

3 recognize what is contained in the envelope?

4 A. Take them out?

5 Q. Yes.

6 A. Underwear.

7 Q. Is that underwear in the same condition as when
8 you took custody of it, or is there anything different?

9 A. I don't recall.

10 Q. Place it back in the envelope.

11 (Complying)

12 Q. Did you make any cuts from the underwear you
13 received before placing it in the envelope?

14 A. No.

15 Q. Did you make any markings on the underwear and
16 before you read it and placed it in the envelope?

17 A. Oh, no.

18 Q. Did you receive underwear from Mya Ramirez during
19 your exam, and did you place it in the envelope?

20 A. Yes.

21 Q. And then after receiving underwear, what did you
22 do with the envelope?

23 A. Put it in the kit.

24 Q. You sealed the envelope?

25 A. I sealed the envelope, put it in the kit.

K. McAllister - People - Direct 833

1 Q. Go to the next step. Thank you.

2 A. Step six was debris collection. No, I did not
3 collect that. Step seven, dried secretions, I collected.
4 Step eight, fingernail scrapings, no. Pulled head hairs,
5 step nine, no. Step ten, pubic hairs, pubic hair combings,
6 no. Step eleven, pulled pubic hairs, no. Step twelve,
7 perianal and anal swabs and smear, yes.

8 Q. I would like to draw your attention back to -- you
9 stated you also collected in addition to the envelope a
10 vulva swab; could you explain to the jury what it means to
11 take a vulva swab?

12 A. So, a vulva is an outside area of the vagina. It
13 would include the outside lip or the labia majora, and the
14 inside lip, labia minora. And so, what you do with the swab
15 is in the envelope, I take the swabs with glove, hands
16 moistened with water. Starting at the top of that area with
17 the rolling motion, you roll down and swab that area and
18 then I believe there is a slide in the kit. I would rub the
19 Q'tip on a slide. Again, put it in the specimen dryer, wait
20 for it to dry, put the swabs in a box in the envelope, put
21 the box in the envelope, seal the envelope and put it in the
22 kit.

23 Q. Did you, in fact, do that as part of your
24 examination of Mya Ramirez?

25 A. Yes.

K. McAllister - People - Direct 834

1 Q. After you completed the steps, the relevant steps
2 of the sex offense evidence kit, after you finished the
3 relevant steps, what did you do next?

4 A. Once the evidence collection is complete, all of
5 the envelopes get put in this box. The box gets closed, an
6 orange seal that I put on the opening and initial it so that
7 it can't be opened unless the tape is broken.

8 Q. And did the hospital keep custody, did you keep
9 the sex offense evidence kit?

10 A. So it remains in my custody until I hand it to a
11 detective.

12 Q. Did you, in fact, hand this sex offense evidence
13 collection kit to be handed to the detective?

14 A. Yes.

15 Q. Who did you hand it to?

16 A. Detective Baran.

17 Q. Is he of the Nassau County Police Department?

18 A. Yes.

19 MR. PERRI: I ask People's 4 be taken from
20 the witness.

21 Q. Nurse McAllister, did you collect any other
22 evidence from Mya Ramirez during your examination?

23 A. Yes.

24 Q. What other evidence did you collect?

25 A. Pajama bottoms.

K. McAllister - People - Direct

835

1 Q. What did you do with those pajama bottoms after
2 you collected them from Mya Ramirez?

3 A. Put them in a brown paper bag labeled and sealed
4 and gave it to the police as well.

5 MR. PERRI: I ask the witness be shown what
6 was what is in evidence as People's 1.

7 (People's Exhibit 1 was handed to the
8 witness.)

9 Q. Did you recognize what is presented to you as
10 People's 1?

11 A. Yes.

12 Q. What do you recognize it to be?

13 A. Pajama bottoms.

14 Q. What markings on that bag indicates to you where
15 this bag came from or whose pajamas bottoms they are?

16 A. The hospital, as a hospital label and that label
17 is on this bag.

18 MR. PERRI: One moment.

19 THE COURT: Take your time.

20 Q. Have you ever testified before, Nurse McAllister?

21 A. Once about twenty years ago.

22 Q. According to the hospital records, was Mya Ramirez
23 discharged that night?

24 A. Yes.

25 Q. And who accompanied Mya Ramirez from her family?

K. McAllister - People - Direct

836

1 A. Her mother.

2 MR. PERRI: Thank you, your Honor. Nothing
3 further.

4 THE COURT: Thank you.

5 CROSS-EXAMINATION

6 MR. BERGER:

7 Q. Nurse McAllister, you indicated that part of being
8 a SANE nurse was to obtain a history from the patient,
9 correct?

10 A. That's correct.

11 Q. Because as you said before, the history tells you
12 how to go about treating a patient, correct?

13 A. Not treating. The history guides my exam.

14 Q. Guides your exam?

15 A. Correct.

16 Q. And it's important, therefore, I think you said to
17 get extensive and detailed history, correct?

18 A. Correct.

19 Q. Now, when you first met Mya, was she with her
20 mother?

21 A. Yes.

22 Q. And when you asked what happened, was it her
23 mother who gave you an answer?

24 A. No.

25 Q. Her mother is with her daughter, correct?

K. McAllister - People - Direct

837

1 A. Correct.

2 Q. By the way, did you ever learn any protocol with
3 respect to interviewing children of the alleged sexual
4 abuse?

5 A. I don't understand the question.

6 Q. You said you took a 40-hour course and that course
7 was for what?

8 A. It was for a sexual assault nurse examiner course.

9 Q. So, you are a nurse examiner and don't they -- did
10 they not teach you in that course that when you are
11 interviewing a child, that you should be interviewing the
12 child apart from anyone else?

13 A. No.

14 Q. So, when you went in and asked, who did you ask,
15 the mother, ask the daughter? Who did you ask when you went
16 in and asked?

17 A. I obtained a history.

18 Q. How?

19 A. I obtained a history and Mya's medical history
20 from the mother, spoke with the mother first and then I
21 spoke with Mya.

22 Q. Mya was there at the time, correct?

23 A. Correct.

24 Q. What did the mother say to you with respect to the
25 history of Mya?

K. McAllister - People - Direct

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1 A. Mom says she entered a room where a known family
2 friend was found with a patient, patient's pants were down.
3 That's what mom said to me.

4 Q. That was the entire history?

5 A. No, sir, this is a brief narrative.

6 Q. All right. Where is the extensive narrative? Is
7 there one?

8 A. From the mother?

9 Q. From the mother, from the child?

10 A. I don't recall.

11 Q. Pardon?

12 A. I don't recall.

13 Q. What is it that you don't recall?

14 A. I recall the brief narrative from the mother due
15 to the medical record.

16 Q. Are you saying that you obtained other information
17 from the mother and from Mya?

18 A. Sure. I would ask the mother is Mya allergic to
19 any medications? Does Mya have a pediatrician? Does this
20 person live in Mya's home? Does Mya, you know, a detailed
21 -- tons of information.

22 Q. You wrote down on your report, possible sexual
23 assault, correct?

24 A. I didn't write that, no.

25 Q. Who wrote that down; do you know?

K. McAllister - People - Direct 839

1 A. I don't know where you are referring to.

2 Q. Look at the clinical impression section. Do you
3 know where that section would be in the report?

4 A. Yes, I do but that is not me.

5 Q. Somebody wrote down possible sexual assault,
6 correct?

7 A. That's what it says, yes.

8 Q. But you didn't write that?

9 A. No.

10 Q. My question now is: Did you ask Mya if she had
11 ever been abused before?

12 A. I don't recall.

13 Q. Wouldn't that be important to know when you are
14 obtaining an extensive detailed history with a possible
15 sexual assault victim?

16 A. Yes.

17 Q. And as you sit here now, you don't know whether
18 you asked her that or not?

19 A. I don't from my notes, no.

20 Q. Is there any way you could remember -- in other
21 words, your notes don't reflect that?

22 A. That's correct.

23 Q. Would it be your practice as a sexual assault
24 nurse to ask whether or not there was any other previous
25 history of sexual assault?

K. McAllister - People - Direct

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1 A. I have asked it.

2 Q. Isn't that the appropriate thing to ask?

3 MR. PERRI: Objection.

4 THE COURT: Overruled. Do you understand the
5 question?

6 A. Is it the appropriate --

7 Q. Yes.

8 A. One could ask that question, yes. One would want
9 to know, yes.

10 Q. Wouldn't you want to know if she was ever abused
11 in any other way, other than the claim of licking her
12 vagina?

13 A. Yes, that would be a question.

14 Q. And you would want to know whether or not she was
15 ever anally abused or have been vaginally abused?

16 A. Correct.

17 Q. Did you do that here?

18 A. I examined Mya's complete body, yes.

19 Q. Did you find any findings with respect to her
20 vagina?

21 A. No.

22 Q. How about her anus?

23 A. No.

24 Q. There were no findings with respect to her vagina
25 or anus, correct?

K. McAllister - People - Direct

841

1 A. Correct.

2 Q. But as you sit here now --

3 MR. PERRI: Withdrawn.

4 Q. You have indicated that it would be appropriate to
5 ask the child if she had ever been abused prior to the date
6 in question, that you are there, correct?

7 A. Correct.

8 Q. And as you sit here now, if she had told you that
9 she had been abused earlier, you would have made a note of
10 that, wouldn't you?

11 A. Yes.

12 Q. So there are no notes at all in this report about
13 any prior abuse, correct?

14 A. No.

15 Q. That is correct. I'm asking you, Nurse
16 McAllister; that is correct?

17 A. Can you repeat the question?

18 Q. There are no notes in your report of any prior
19 sexual abuse; is that correct?

20 A. That is correct.

21 Q. And you would have made that note if she had said
22 there was?

23 A. It would have been pertinent. It would have been
24 a finding, yes.

25 Q. If she said she had been abused in any other way,

K. McAllister - People - Direct

842

1 or in additional instances, you would have made a note of
2 that?

3 A. Yes.

4 Q. Am I correct in my assumption, in all of the time
5 that you were with Mya, her mother was present?

6 A. Yes.

7 Q. In the course of your taking that 40-hour course,
8 did you ever learn that when interviewing the child, a
9 possible sexual abuse victim, that you should take that
10 child away from any other person, that you just interview
11 them by yourself?

12 A. No.

13 Q. Did you learn in that course that there are ways
14 in which to question a child so that you are neutral in your
15 questioning and not suggesting answers?

16 A. My questions and exams are always neutral.

17 Q. They're supposed to be neutral?

18 A. Correct.

19 Q. I know that's what the intention is, right?

20 A. Yes.

21 Q. In the course of your taking that course to become
22 a sexual assault nurse, did you ever learn of any New York
23 State protocol with respect to interviewing children?

24 MR. PERRI: Objection.

25 THE COURT: I'll take an answer if you

K. McAllister - People - Direct 843

1 learned any.

2 A. No.

3 Q. Did you make a notation on this medical report
4 that Mya was playful, alert, talkative, follows direction,
5 answers questions; did you make that notation?

6 A. Yes.

7 Q. Did you make a notation saying that Mya should
8 follow-up for a SCAN appointment?

9 A. What page is that?

10 Q. What page?

11 A. Yes.

12 Q. It says emergency department, patient discharge
13 instructions?

14 A. No.

15 Q. But it does mention your name thereafter that;
16 does it not?

17 A. That's correct.

18 Q. So you didn't write that, but did you say she
19 should follow-up for a SCAN appointment?

20 A. Yes. I discharged her with a pediatric SCAN
21 clinic appointment.

22 Q. And did they ever come back?

23 A. I don't know.

24 MR. BERGER: Thank you. I have nothing
25 further.

K. McAllister - People - Redirect 844

1 THE COURT: Any redirect?

2 MR. PERRI: Just a little bit, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. PERRI:

5 Q. Nurse McAllister, what does SCAN stand for?

6 A. Supposed child abuse and neglect.

7 Q. And what was the appointment that you had
8 recommended to Mya and her mother?

9 A. It's a clinic we refer children to as a follow-up,
10 because she is in the emergency room. This is an emergent
11 exam, so the follow-up is for a specialty clinic.

12 Q. When you first spoke with Mya, did you say
13 anything to her before asking her what happened?

14 A. No.

15 Q. Did you say anything to Mya about what exactly you
16 were looking for to find out from her?

17 A. No.

18 MR. BERGER: Objection. This is not proper
19 redirect.

20 MR. PERRI: It goes to whether or not her
21 exam was suggestive.

22 THE COURT: I will allow it.

23 You may answer.

24 A. Could you repeat it?

25 Q. In speaking with Mya, did you tell her anything